

(1972) 03 BOM CK 0019
In the Bombay High Court
Case No : Spl. C.A. No. 1460 of 1966

Shrikant

APPELLANT

Vs

Dhondi

RESPONDENT

Date of Decision : 10-03-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 29, 31, 31(1), 31(3)
Constitution of India, 1950 — Article 227

Citation : (1973) MhLj 283

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : R.G. Samant, for the Appellant; H.D. Gole, for the Respondent

Judgement

G.N. Vaidya, J.—This petition raises an interesting question under the Bombay Tenancy and Agricultural Lands Act, 1948. The question is whether the landlord who was a minor when he made application u/s 31 and obtained possession of a portion of the land under that section can after attaining majority resist proceedings u/s 32G for conferring statutory ownership on the tenant in respect of the land remaining with the tenant by invoking the provisions of sections 32F of the Act.

2. The relevant facts are as follows :-

The subject-matter of dispute between the parties is agricultural land bearing Survey No. 250/2A, situated at Degaon, Taluka North Sholapur. During his minority the petitioner landlord had applied for possession of land Survey No. 250/2 u/s 31 of the Bombay Tenancy and Agricultural Lands Act, 1948, for bona fide personal cultivation. In the application which was numbered as 67 of 1960, the Additional Mamlatdar, North Sholapur, had ordered possession of half of the land to be given to the petitioner on November 20, 1961. The appeal filed by the tenant-respondent No. 1 against the said order was dismissed by the Assistant Collector, Sholapur. A revision application filed by the tenant was also dismissed by the Maharashtra Revenue Tribunal.

The tenant came to this Court in Special Civil Application No. 602 of 1963. A consent decree was passed on September 10, 1963 by this Court. The consent terms which were agreed between the parties were as follows :

(1) The order passed by the Additional Mamlatdar, North Sholapur, Assistant Collector, Sholapur Division and the Maharashtra Revenue Tribunal, be set aside and the following order be substituted therefore.

(2) That the Additional Mamlatdar will effect an equitable partition of the suit land Survey No. 250/2, measuring 28 acres 6 gunthas, assessed at Rs. 40/13 of Mouje Degaon and put Respondent No. 1 in possession of 1/3rd portion of the suit land.

(3) That the Respondent No. 1 has already obtained possession of 1/2 land under the orders of the Maharashtra Revenue Tribunal, Additional Mamlatdar and Assistant Collector which have been now set aside. The Additional Mamlatdar shall repartition the entire land and put the Petitioner in possession of 2/3rd of the total area after crops grown by Respondent No 1 in the current year are harvested by Respondent No. 1.

(4) That the petitioner's tenancy in respect of the 1/3rd portion to be given to Respondent No. 1 under this settlement is extinguished and the Petitioner continues to be in possession of the remaining 2/3rd portion with all the rights and liabilities under the Bombay Tenancy and Agricultural Lands Act, 1948 including the right to become a statutory purchaser.

(6) There will be no order as to costs.

The decree was executed by putting the landlord in possession of 1/3rd portion (i. e. of Survey No. 250/2B measuring 9 acres 7 gunthas, assessed at Rs. 13/25.) The tenant was put in possession of the remaining 2/3rd portion of the land, i.e. 250/2A, measuring 18 acres and 27 gunthas, assessed at Rs. 27.56 p., which, as stated above, is the subject-matter of that petition.

3. Thereafter the Additional Mamlatdar started proceedings u/s 32G for conferring statutory ownership on the tenant in respect of the land with the tenant. In the course of these proceedings the landlord made an application on September 26, 1964 that the proceedings should be started u/s 32F and not u/s 32G because section 32G did not apply to the land remaining with the tenant. By an order dated November 21, 1964 the Additional Mamlatdar rejected the application of the landlord. He held that though the landlord was a minor at the time of the earlier application when he had terminated the tenancy u/s 31, u/s 32, the tenant became entitled to purchase the land retained by him on the postponed date, i. e. the date of the decision of the High Court on September 10, 1963. He, therefore, held that section 32F was not attracted. He directed that separate proceedings u/s 32G should be started in respect of the land in possession of the tenant.

4. The said order of the Additional Mamlatdar was challenged by the petitioner in

appeal before the Collector, Sholapur. The Collector held that the petitioner was minor on April 1, 1957, and though an application was made by the petitioner u/s 31 (3), proper procedure was not complied with under sections 32E and 32G. The certified copy of the judgment filed by the petitioner in this Court shows that he directed enquiry to be held u/s 32F and that appears to be more probable because section 32E deals with the disposal of balance of lands after purchase by tenants which is not the case here. However, the Collector appears to have changed it to section 32F without initialing the correction. It may, therefore, be safe to assume that what the Collector really meant was to direct enquiry u/s 32F.

5. The order of the Collector was challenged by the tenant before the Maharashtra Revenue Tribunal in a revision application, which was allowed by the Tribunal by its judgment on March 29, 1966. The Tribunal following the decisions of this Court in *Bai Sonabai Bhukandas Shah v. Dattatraya Ramkrishna Chandrate* (1965) Spl. C. A. No. 1192 of 1963, decided by Patel J., on January 19, 1965 (Unrep.), and *Pandurang Tukaram Thombare v. Malhari Shripati Mengade* (1965) Spl. C. A. No. 976 of 1964, decided by Chandrachud J., on April 8, 1965 (Unrep.), set aside the order of the Collector holding that section 32F was not attracted and made the following observations :

It is found from the Judgment of the learned Collector that the opponent had filed the application u/s 31 after attaining majority. The opponent has exercised his right u/s 31. The case u/s 31 was finally decided in the High Court on 10-9-1963. Evidently, therefore, the provisions of section 32-F are not attracted in this case. When once the landlord who is entitled to terminate the tenancy during the period mentioned in section 31 (3) has exercised his right by applying for possession, the case is later on governed only by the provisions of section 32 and not 32-F.

The said decision of the Tribunal is challenged in the above petition.

6. Mr. Samant, the learned counsel for the petitioner-landlord, submitted that the view taken by the Tribunal is contrary to the view taken by the Full Bench in *Vishnu Shantaram v, Indira Anant*³ and four unreported decisions of this Court in *Smt. Kasturbai Damming Patel v. Keshav Hari Jadhav* 1972 Mb. L J 124 = (1971) 73 Bom. L E 792 (F. B.), *Smt. Rahibai Kisan Thorat v. Yeshwant Laxman Thorat* (1968) Spl- C. A. No. 912 of 1966, decided by V. S. Desai J., on September 30, 1968 (Unrep.); and *Havabibi A. Gulam Chafekar v. Shaikh Ebrahim Baba Tambivi* (1968) Spl. C. A- No. 2070 of 1967, decided by Bal J., on August 9, 1968 (Unrep.); and *Arvind Vishwanath Aple v. Krishna Narayan Dharva* (1969) Spl. C.A. No. 159 of 1969, decided by Palekar J., on March 27, 1969 (Unrep.) decided by Palekar J. (as his Lordship then was). He further submitted that the aforesaid two decisions relied upon by the Tribunal do not lay down that section 32F is not attracted to the land left with the tenant after termination of his tenancy u/s 31, by a minor.

7. Apart from authorities, it is clear that the contention raised by the petitioner is

fraudulent. When the consent terms were filed in this Court the petitioner had clearly agreed that the tenant shall have all the rights and liabilities under the Bombay Tenancy and Agricultural Lands Act, 1948, including the right to become a statutory purchaser. If it was not the intention of the parties when they filed the consent terms in this Court on September 10, 1963 to admit the right of the tenant to purchase the 2/3rd land remaining with him, the words "including the right to become a statutory purchaser" would not have been there in the said terms. Mr. Samant's argument that the word "liabilities" contained in the consent terms is enough to confer on the landlord a right to resist the proceedings u/s 32G, is not consistent with the specific mention of the words "including the right to become a statutory purchaser". It is true that Mr. Samant himself had signed the said consent terms. It is, however, difficult to accept his argument that the word "liabilities" would confer on the landlord a right to resist the vesting of the statutory ownership on the tenant u/s 32, as it would have been very easy for the parties then to provide in the consent terms the words to that effect such as "without prejudice to the rights of the landlord to contest the claim of the tenant for statutory ownership". Having agreed to the 2/3rd portion of the land remaining with the tenant with all the rights and liabilities under the Bombay Tenancy and Agricultural Lands Act, 1948, including the right to become a statutory purchaser, the petitioner could not challenge the right of the tenant to become the owner thereof. On this ground alone the orders passed by the Additional Mamlatdar and the Tribunal deserve to be upheld. In any event as stated "\ above the plea raised by the landlord is dishonest and such a dishonest plea cannot succeed before this Court in the exercise of powers under Article 227 of the Constitution.

8. Apart from this, in my opinion, the statutory provisions contained in sections 31 to 31C and sections 32 to 32R of the Act, manifestly lay down that once the landlord recovers possession of the land u/s 31 he cannot repel the vesting of the statutory ownership under the statute on the tenant in respect of the land remaining with the tenant. Section 31 confers a right on the landlord to terminate the tenancy for personal cultivation and non-agricultural purposes, subject to sections 31A to 31D . Section 31C lays down :

The tenancy of any land left with the tenant after the termination of the tenancy u/s 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

9. Section 31 (3) makes a special provision with regard to minors and disabled persons and widows and successors-in-title. It is now settled that in spite of these provisions a minor or widow or disabled person could terminate the tenancy u/s 31 (I) of the Act and apply for possession, provided in the case of a minor or disabled person he is properly represented in the proceeding. If a minor could apply u/s 31, even such an application would be governed by section 31C. u/s 32 (1) (b), which application this case, the tenant becomes the owner of the land cultivated by him o. (he Tillers" day, i. e. on April 1, 1957, except where the

landlord has made and continues to make, applications u/s 29 of the Act for possession, in which case the tenant becomes owner on the postponed date, i. e. the date on which the order of rejection is passed. It is, therefore, clear that, on September 10, 1963 when the landlord's, application in this case for possession of the land was rejected in respect of 2/3rd portion of the land, the tenant became the statutory owner of the land, under the proviso to section 32 (1) (b) of the Act on September 10, 1963 as rightly held by the Tribunal. The order of the High Court based on the consent terms arrived at between the parties amounted to the rejection of the application of the landlord for possession of the 2/3rd of the land. He was put in possession only 1/3rd portion of the land and with respect to the 2/3rd portion, possession was with the tenant and the tenant automatically became the statutory owner there "f. In view of the provision in section 32 (t) (b), it is difficult to understand how the landlord can raise a contention that the tenant cannot become the owner of the land because of the provisions of section 32F.

10. It is true that the date of birth of the petitioner-landlord is undisputable December 17. 1941. It is also true that he was on the Tiller's day a minor and on the date of the application, i. e. on December 16, 1960, he had already attained majority, he having attained majority on December 17, 1959. Section 32F (I) (a) of the Act, with which we are concerned in this case, lays down :

32F. (1) Notwithstanding anything contained in the preceding sections,- (a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land u/s 38 within one year from the expiry of the period during which such landlord "s entitled to terminate the tenancy u/s 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31:

Provided that....

We are not concerned with the rest of the provisions. It is clear that this sub clause will apply only when the landlord is entitled to terminate the tenancy u/s 31. As stated above u/s 31C, having regard to the facts and circumstances of this case, the petitioner-landlord had no right to terminate the tenancy. It is, therefore, futile on the part of the petitioner-landlord to invoke the provisions of section 32F.

11. The Tribunal was, in my opinion, right in relying, on the decision in Bai Sonabai Bhukandas Shah v. Duttatraya Ramkrishna Chandratre. The short facts in that application were that opponents Nos. 1 and 2 were the protected tenants of the petitioner who was a landlord. The petitioner filed an application for the recovery of possession of the land in dispute on the ground of three defaults. It was alleged that there was a partition on December 21, 1956 between the brothers at which the mother was given the above lands as also some other

lands in her own right as a sharer. After obtaining these lands in the partition, she commenced proceedings u/s 31 (3) against the tenant. The Mamlatdar allowed her application on March 30, 1961 and directed the tenant to hand over possession of half of the land to her. The Collector, on appeal, dismissed the appeal on September 30, 1961. In the meantime, the petitioner alleged that a portion of the rents for the years 1956-57, 1957-58 and 1958-59 had remained unpaid and intimations of these defaults were duly given on August 22, 1957, August 23, 1958 and August 24, 1959, and thereafter an application was filed on March 4, 1960 for possession of the land on the ground of three defaults. The Tenancy Aval-Karkun accepted the case of the petitioner and ordered eviction of the land. The tenant appealed to the Collector alleging that the Tenancy Aval-Karkun was wrong in saying that as the lands were held by the widow, the Tillers' day was postponed and this contention was accepted by the Collector. The Collector, in appeal, set aside the order of the Tenancy Aval-Karkun, accepted the contention raised on behalf of the tenants, that the Tillers' day was not postponed in view of the orders passed u/s 31 of the Act. The petitioner-landlady challenged the decision of the Collector before the Maharashtra Revenue Tribunal. The Revenue Tribunal also expressed the view that as the widow had filed an application u/s 31 (1) of the Act, and she was allowed half the land, in respect of the other half the tenant became statutory purchaser and, therefore, her application u/s 14 had become infructuous.

12. The said view was upheld by the High Court on the ground that section 32F of the Act gave right to the successor-in-title of the widows and not to the widows, and hence section 32F of the Act could not be invoked on behalf of the landlady who was the petitioner in that case. The widow became absolute owner under the Hindu Succession Act and section 32F had no application. It is true that, as pointed out by Mr. Samant, the learned counsel for the petitioner, section 32F was not specifically considered in that case, and yet the Tribunal was justified in relying on the said decision as the High Court upheld the view taken by the Collector and the Tribunal in that case that once the widow applied for possession u/s 31 and obtained possession of half of the land under that section, the tenant became a statutory purchaser of the remaining land with him.

13. In Pandurang Tukaram Thombare v. Malhari Shripati Mengade the petitioner who was the landlord in that case had obtained an order for possession of half the lands from respondent-tenant No. 1 u/s 31 of the Act. Respondent No. 1 was declared to have become a purchaser of the remaining half u/s 32-0. Mr. Samant, who appeared in that case, submits that reference to section 32-0 is not correct and that it should be section 32G. The order declaring the tenant to be the tenant purchaser of the remaining half was, however, set aside in appeal by the Deputy Collector. But the order of the Deputy Collector was set aside as illegal. The order of the Tribunal was confirmed by Chandrachud J., who observed inter alia as follows :-

It is not disputed by Mr. Samant, and very rightly so, that the decision of the

Deputy Collector is wrong and that the 1st respondent would be entitled to be declared to have become the purchaser of the remaining half of the lands.

The order of the Tribunal was challenged by Mr. Samant on the ground that the Tribunal could not have condoned the delay in the absence of sufficient cause. In that case Chandrachud J. held that the very fact that the delay was condoned in view of the patent illegality of the order, implied that the Tribunal condoned the delay for sufficient cause. Mr. Samant is undoubtedly in an unhappy position in this case, inasmuch as he had to argue contrary to the concession made in that case. He strenuously urged that the decision of Chandrachud J.'s judgment being based on the concession, it could not be a decision binding on the Tribunal. This contention of Mr. Samant must be rejected as, with respect, Chandrachud J. has confirmed the order of the Tribunal in that case not by merely relying on his concession, but also with the observations "and very rightly so" as quoted above. The Tribunal, therefore, was right in following even this judgment of this Court.

14. As the Tribunal followed the judgments of this Court in holding that the petitioner-landlord could not invoke section 32F, the petitioner cannot ask this Court to interfere with the decision of the Tribunal unless the decisions followed are subsequently overruled by this Court. None of the four decisions cited by Mr. Samant or the four unreported decisions cited by the State or the decisions by Patel J. or Chandrachud J. referred to the implications of section 31C. The Full Bench decision in fact lays down that section 32F cannot exist independently of section 32. In ray judgment, section 32F cannot also exist independently of section 31. If the landlord cannot terminate the tenancy u/s 31C, he cannot rely on section 32F for postponing the date further.

15. Moreover, the logical extension of the provisions of the Full Bench decision should not be permitted when the plain provisions of the Statute require the Court to arrive at a particular conclusion. Lord Halsbury laid down in *Quinn v. Leathern* (1969) Spl. C.A. No. 2797 of 1968, decided by Bal J., on February 5, 1969 (Unrep.) as follows (p. 506):

that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

In view of this well-settled proposition in respect of the precedents, it is unnecessary for me to discuss the Full Bench decision or other unreported judgments cited above by Mr. Samant, which were not dealing with section 31C. That question did not arise for decision in these cases.

16. In the result, the petition fails. Rule discharged with costs.