

(1985) 04 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1643 of 1979

Shrikrishna Subhana Horambale and Others

APPELLANT

Vs

Shripad Jiwaji Apate and Others

RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32F, 32G

Citation : AIR 1986 Bom 86 : (1987) 89 BOMLR 12

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : V.V. Divekar, for the Appellant; G.R. Rege, for the Respondent

Judgement

1. An interesting question of law - formulated below - under the Bombay Tenancy and Agricultural Lands Act (hereinafter the Tenancy Act) arises for determination in this writ petition.

2. One Jiwaji was the original landlord of the suit land and the petitioners his tenants. The suit land as also the relationship between the parties was at all relevant times governed by the Tenancy Act. As , on the Tiller's Day 1st April 1957, the petitioners were in personal cultivation of the suit land, proceedings were held under S.32G of the Tenancy Act for fixation of purchase price. The tenants expressed willingness to purchase. However, as the landlord was a physically disabled person, the proceedings were dropped because under S. 32F(1)(a) of the Tenancy Act, in the case inter alia of a landlord subject to physical disability the tenants' right of purchase stood postponed. This was in June 1959. Subsequently in February 1962, proceedings under S. 32G were again held but despite tenants' willingness to purchase, the said proceedings had to be again dropped as the landlord continued to be subject to physical disability. Thereafter, however, the physical disabled landlord died on 25th August 1962 while still under disability. After his demise, proceedings (third in the series) under S. 32G of the Tenancy Act were again held in 1964. The tenants once again expressed their willingness to purchase. The record, however, does not

indicate as to what ultimately happened to these proceedings. Learned Advocates on either side were also unable to throw light thereon. Consistent position, however, has been that the tenants all throughout have been in personal cultivation of the suit land and all along willing to purchase the same. Proceedings (fourth in the series) u/s 32G of the Tenancy Act were held again in 1974. The tenants once again expressed their willingness to purchase. The Tenancy Authority, however, held that though the tenants were willing to purchase the suit land, they had lost their right to do so in view of absence of intimation u/s 32F of the Tenancy Act to the heirs of the deceased disabled landlord Jiwaji. The purchase was, therefore, declared ineffective. Tenants' appeal therefrom failed. Their further revision to the Revenue Tribunal was also in vain. Hence this petition.

3. Mr. V.V.Divekar, learned Counsel for the petitioners-tenants, submitted that there was no question here of giving intimation to the heirs of the landlord Jiwaji under S.32F of the Tenancy Act. Section 32F has no application to such a case and cannot be invoked to defeat the tenants' right of purchase. In law, the tenants here became deemed purchasers - statutory and automatic - on 25th August 1962 when the disabled landlord died while still under disability. The impugned declaration of ineffective purchase was, therefore, according to him, unsustainable. Mr. G.R. Rega, learned Counsel for the heirs of the landlord, contended on the other hand that notwithstanding the demise of the disabled landlord, S.32F would apply to this case and can be invoked by his heirs. This provision makes no distinction between a disabled landlord who survives his disability and a disabled landlord who dies while under disability. The declaration of ineffective purchase was, therefore, according to him, legal and valid.

4. The question for determination is:

Does S. 32F of the Tenancy Act available to or can it be invoked by the heir or successor-in-title of a disabled landlord who dies while under disability? Now, there is no easy answer to this question on which, I understand at the Bar, there is no direct authority either way. However, considering the relevant provisions of the Tenancy Act in the context of the basic object of this law, the question, as will gradually be seen, resolves itself in favour of the tenants.

5. If the disabled landlord was alive and had continued to be subject to physical disability, the tenants would have continued to be his tenants, if the landlord's disability had ceased during his lifetime, he would have been then entitled to terminate the tenancy under S.31 of the Tenancy Act. If the tenancy had been so terminated, then, in an application thereafter under S.29 of the Tenancy Act, the landlord would have either failed or succeeded, wholly or partly, and the tenants would have, on final termination of the said proceedings, automatically become the deemed purchasers of the whole or part of the suit land as the case be. Their statutory right of purchase, which had remained in abeyance during the period of the landlord's disability, would have accordingly got suitably crystallized by operation of law. Still further, if the landlord's disability had ceased but he had

even so failed to take within one year thereafter action as per S.31(3), then the tenants would have, on intimation [within a further period of one year as per S.32F(1)(a)] to the landlord of their willingness to purchase, become deemed purchasers of the suit land. However, in view of the landlord's demise during the subsistence or continuance of his disability, this contingency did not arise.

6. Now, at all relevant times the tenants had subsisting in their favour a statutory right of purchase. All that resulted by virtue of the disability of the landlord was postponement of the said right and not its defeat or extinguishment. Could it then be said or held that though aforesaid was the position subsisting in favour of the tenants at all relevant times during the lifetime of the landlord, the same stood extinguished per se by the landlord's demise in a state of disability? Appropriate answer in consonance with justice would be in the negative. When the tenants already had a statutory right of purchase vested in them and when they had, as many as on four different occasions, affirmatively expressed in section 32G proceedings their willingness to purchase but when because of their landlord's disability (a circumstance beyond the control of the tenants) they could not, in the lifetime of their landlord, become deemed purchasers, could it at all have been the intention of the Legislature to even so extinguish in limine or summarily this vital and important and statutory right ipso facto on the demise of a disabled landlord? Appropriate answer in consonance with justice would once again be in the negative. In a case such as this, an important statutory right of purchase conferred by the legislature upon the tenants in actual possession and personal cultivation cannot be defeated or set at naught by a misconceived recourse to S.32F. This provision does not deal with a situation as the instant one. It does not provide for such contingency. Such a likelihood was perhaps not foreseen by the legislature. If foreseen, the legislature would have expressly provided for it in a manner, of which this Court has no doubt, in favour of the tenants' vital statutory right of purchase otherwise so categorically conferred upon them by the Tenancy Act. In the circumstances, one may then turn to the fundamental provision of S.32 of this Act.

7. Section 32 is a very vital provision. It is a key section introduced with effect from 1st August 1956 by Amending Act 13 of 1956. This Amending Act is intended overwhelmingly for the benefit of tenants. It is a landmark legislation conferring upon tenants who are tillers of the soil ownership rights qua the land they personally cultivate. This statutory ownership so conferred operates or takes effect automatically. As observed by the Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*,

"..... The title of the landlord to the land passes immediately to the tenant on the tiller's day and there is a completed purchase or sale thereof as between the landlord and tenant. The tenant is no doubt given a locus poenitentiae and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing

to purchase the land, the Tribunal shall, by an order in writing, declare that such tenant is not willing to purchase the land and that the purchase is ineffective....."

"If no such declaration is made by the Tribunal, the purchase would stand as statutorily effected on the tiller's day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal....."

"The title to the land, which was vested originally in the landlord, passes to the tenant on the tiller's day or the alternative period prescribed in that behalf. This title is defensible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot, therefore, be said that the title of the landlord to the land is suspended for any period definite or indefinite....."

Such then are the vital, valuable and vested rights conferred upon tenants by the legislature. In the absence of any express provision to the contrary and then also save expressly in accordance therewith, courts and tribunals may not seek to undo what the Legislature seeks and intends to achieve.

8. Reverting then to the position here, there is no dispute that more than once, the tenants have unequivocally expressed their willingness to purchase the suit land. It is also not in dispute that the tenants have been in personal cultivation thereof at all relevant times. Indeed, they and their predecessors have been in possession and cultivation continuously for nearly half a century prior to the tiller's day 1st April 1957 as also continuously thereafter till now. The tenants willingness to purchase was more than once placed on record before the Agricultural Lands Tribunal in purchase proceedings under S.32 read with S.32G but each time the proceedings and the purchase stood postponed not because of any fault of the tenants but because the physically disabled landlord continued to remain physically disabled all throughout his life. There is no provision in the Tenancy Act under which, despite the aforesaid circumstances and the tenants' willingness to purchase more than once positively expressed and exercised the said right of purchase nevertheless becomes ineffective or stands extinguished by the demise of the disabled landlord. There is also no provision which legally requires or obliges the tenants to give to the successors-in-title of the deceased disabled landlord notice or intimation of willingness to purchase despite their such willingness already expressed to the late landlord himself in his own lifetime in proceedings under S.32 read with S.32G of the Tenancy Act. Also relevant in this context is the pertinent circumstances that neither S.31(3) nor S.32F(1)(b) of the Tenancy Act includes successor-in-title of a disabled landlord. This, indeed, is yet another strong indication of the legislative intent in the aforesaid behalf.

9. In all the circumstances, reliance placed on S.32F to defeat the tenants"

statutory right of purchase is misconceived and of no avail. Just and reasonable legal conclusion would be that the tenants here, who had already more than once in the very lifetime of their landlord expressed their willingness to purchase the suit land, became statutory or deemed purchasers thereof on 25th August 1962 when their disabled landlord died. The only obligation then cast on the tenants was, as indicated by the Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, supra viz., payment of price in the mode determined by the Agricultural Lands Tribunal. The title thus statutorily acquired by the tenants was, again in terms of the aforesaid ruling, defeasible only in the event of the tenants failing to appear or making a statement that they are not willing to purchase the land or committing default in payment of the price thereof as determined by the Agricultural Lands Tribunal. Here, the tenants have very much appeared. They have also more than once categorically expressed their willingness to purchase. As at present, therefore, the purchase is effective. Only in the event of the tenants' failure to pay the price as determined by the Agricultural Lands Tribunal that the question of declaring the said purchase ineffective may, if at all, arise.

10. This conclusion is most in accord with reasons and justice as also in consonance with the "judicially presumed legislative concern for justice." (Maxwell) It is also a conclusion facilitating the avowed object of the Tenancy Act and in line with the golden thread running through the said statute protecting the rights and interests of the tiller of the soil. This conclusion seeks to achieve the paramount and predominant legislative intent behind this landmark legislation by a welfare State. My answer thus to the twim question supra is in the negative. The impugned orders cannot, therefore, be sustained.

Hence Order:

11. In the result, this petition succeeds and the same is allowed. The impugned orders of the authorities below are set aside and quashed. It is held and declared that the petitioners-tenants have on 25th August 1962 become statutory and deemed purchasers of the suit land. The proceedings will now be returned to the Agricultural Lands Tribunal. The said Tribunal will now proceed to fix the purchase price in accordance with S.32G of the Tenancy Act and pass appropriate orders for payment thereof.

12. Rule is made absolute in terms aforesaid. In the circumstances of the case, however, there will be no order as to costs throughout. Petition allowed.