

(1972) 03 BOM CK 0022

In the Bombay High Court

Case No : Spl. Civil Application No. 1378 of 1966

Sujataali, Motebarali and Another

APPELLANT

Vs

Rupchand Vishnu Dhande and Others

RESPONDENT

Date of Decision : 28-03-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 31, 32(1B)

Citation : AIR 1973 Bom 365 : (1973) 75 BOMLR 257 : (1973) ILR (Bom) 1163 : (1973) MhLj 766

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : N.S. Shastri, for the Appellant; V.M. Limaye, for the Respondent

Judgement

Vaidya, J.—These two Special Civil Applications were filed on behalf of Shrimati Balubai Motebarali and involve a common question as to whether the respondent No.1 in each of these matters who are tenants become owners u/s 32 of the portions of the land left with them after the landlady recovered possession of half of the land u/s 31.

2. The Agricultural Lands Tribunal and the Additional Mamlatdar, Yawal, held that because the landlady had applied under S. 31 read with S. 29 of the Bombay Tenancy and Agricultural Lands Act, 1948, for recovering possession of the land for bona fide personal cultivation and obtained possession after fighting the litigation up to the Revenue tribunal of the half portion on May 16, 1964, she became the owner of the land. The said order of the Agricultural Lands Tribunal was set aside by the Special Deputy Collector, Jalgaon, who following a decision of the Revenue Tribunal reversed the finding of the Mamlatdar. He held that on the date of the final rejection of the landlady's application by the Revenue Tribunal on December 13, 1963, the tenant became the statutory owner, following a decision of the Revenue Tribunal in some other case. The said order of the Deputy Collector is confirmed by the Maharashtra Revenue Tribunal in a revision application filed by the original petitioner Shrimati Balubai, following the

above said decision of the Tribunal and other decisions in which it was held that the day on which the application u/s 31 was decided, as possession of the suit land was retained with the tenant, the tenant became the statutory purchaser on that date.

3. The said view is challenged before me by Mr. Shastri who appears for some of the heirs of Balubai who died during the pendency of the above petition, on the ground that the view taken by the Tribunal is contrary to the view of this Court with regard to the scope and effect of Section 32-F taken in some of the unreported decisions of this Court. Apart from authorities, the sections themselves, in my judgment, leave no doubt that Section 32-F cannot be attracted in respect of the land remaining with the tenant after an application filed by a widow u/s 31 is decided. In the present case we are concerned with Shrimati Balubai who had terminated the tenancy u/s 31 for bona fide personal cultivation. Although u/s 31 (3), the rights of termination are given to the successor-in-title of a widow, it is now settled that even a widow could make an application u/s 31. If she exercises that right, that right was subject to the provisions of Section 31-C which laid down that 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. u/s 32 (1-B) Proviso, whenever an application is made by the widow u/s 29, the tenant becomes owner when the order rejecting the application is finally passed. In the present case the order was finally passed by the Revenue Tribunal and the Deputy Collector and the Tribunal have held, therefore, that the date of the order of the Maharashtra Revenue Tribunal was the date on which the tenants in the two cases became the statutory purchasers u/s 32.

4. It is clear, therefore, that the tenants become owners u/s 32 (1-B) (first Proviso), unless there is some other section which prevents that vesting. In my judgment, Section 32-F is not that section; and there is no other section which prevents the vesting. Section 32-F(1)(a) lays down that where the landlord is a widow, the tenant shall have right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. Where the widow has already exercised that right, in my judgment, Section 32-F will have no application, because of Section 31-C which takes away her right to terminate the tenancy.

5. Moreover, in the case of a widow, u/s 31 (3), her successor-in-title would be entitled to terminate the tenancy within one year from the date on which her interest in the land ceases to exist. Once the widow exercises her right u/s 31, her right to terminate the tenancy is extinguished u/s 31 (3) on the ground of bona fide requirement. Where there is no other ground for the termination of tenancy therefore, the successor-in-title of the widow cannot inherit any right, title or interest whatsoever in respect of the land left with the tenant after termination by the widow. This aspect also induces me to hold that Section 32-F

can never be attracted in respect of the lands remaining with the tenant. The landlady acquired possession of half the land under an order u/s 29 which has become final. That is also the view taken by me in Special Civil Application No. 1106 of 1966 decided on March 6, 1972.

6. Mr. Shastri, the learned counsel for the heirs of Balubai however, submitted that Palekar J. as he then was, has taken a contrary view in Special Civil Application No. 1064 of 1969 decided on 22-8-1969. But in that case there was a compromise before the Tribunal and the Tribunal had refused to record the compromise. The only question decided by Palekar J. was that in view of the decision of Bal J. in Special Civil Application No. 2797 of 1968 decided on February 5, 1969 and the provisions of Section 32-F, the Tribunal erred in the exercise of its jurisdiction in not recording the compromise which on the face of it was beneficial to both the sides, as an application u/s 14 was also pending against the tenant. There is no reference to Section 31-C in that case, which in my judgment is relevant for consideration in a case like the present one.

7. In Special Civil Application No. 2071 of 1967 decided on August 9, 1968 by Bal J., an application filed on December 6, 1962 u/s 14 read with section 25 (1) was granted only in respect of one of the two lands and rejected in respect of the other land on the ground that the landlord had obtained possession of the remaining half of that land u/s 31. The Deputy Collector set aside the order. In a revision application filed by the landlord the Tribunal remanded the case to the Tenancy Awal Karkun with a direction to ascertain whether the tenant had paid the rent. After remand possession was again ordered by the Tenancy Awal Karkun. The Deputy Collector set aside that order. The Revenue Tribunal confirmed that order, Bal J. refused to interfere with the order of the Tribunal and while doing so made an observation that even though S. 31C prevented the widow from making an application for bona fide personal cultivation she could make an application u/s 14. There is no consideration of the effect of Section 32-F in that case. Moreover, the tenants were unrepresented in that case. The decision was an ex parte decision. All that was decided by Bal J. was that the fact that the petitioner in that case obtained possession did not bar her application u/s 14.

8. In Special Civil Application No. 2797 of 1962 decided by Bal J. on February 5, 1969 and referred to by Palekar, J. in the aforesaid case, the petitioner was a widow. She applied in 1968 for restoration of possession of the land to her u/s 29 read with Section 31 of the Bombay Tenancy and Agricultural Lands Act, on the ground that she required the same for personal cultivation. The Mamlatdar who enquired into the case, directed restoration of possession to the petitioner of 1 acre and 9 1/2 gunthas out of the land. That order was confirmed in appeal by the Deputy Collector in the year 1961 and in execution of that order the petitioner obtained actual possession of 1 acre and 9 1/2 gunthas of the land. The remaining area of 1 acre and 3 1/2 gunthas remained with the opponent. On the ground that the tenant failed to pay rent from 1957-58 to 1964-65, she

terminated the tenancy on February 16, 1967. She applied for restoration of possession u/s 29 read with Sections 14 and 25 (2) of the Act on May 19, 1967. The Tahsildar dismissed that application on the ground that intimations were not given u/s 25. On appeal the order was confirmed by the Sub-Divisional Officer. The petitioner filed a revision application before the Revenue Tribunal and in that application it was contended on her behalf that even if there were no intimations in respect of the defaults as required by Section 25 (2) of the Act, an order of granting relief u/s 25 (1) should have been passed. On behalf of the tenant it was contended before the Revenue Tribunal that the tenant had become statutory purchaser of the land in dispute on the date of the final decision of the petitioner's application u/s 29 read with Section 31 i.e. in 1961 and the application made thereafter u/s 29 read with Section 14 was not maintainable. The Tribunal upheld this contention. The said decision of the Tribunal was challenged in the above Special Civil Application and Bal J. held that Section 32-F was attracted as the petitioner was a widow and hence the tenant could not become the purchaser and Section 31-C was not attracted as the application by the petitioner was u/s 14 on the ground of defaults. In my judgment, that case also does not support Mr. Shastri's argument because we are not here dealing with an application u/s 14. I do not wish to express any opinion as to whether I agree with the view taken by Bal J. as it is unnecessary for me to decide the question in the facts and circumstances of the present case. In the present case there is no ground u/s 14 against the tenant.

9. In Civil Revision Application No. 1283 of 1960 decided on November 17, 1962 by Patel and K. K. Desai JJ, the question of the effect of Section 32-F and Section 31-C was not at all considered by the Court as it was not necessary.

10. It is, therefore, clear that none of the decisions cited by Mr. Shastri support his argument that even though the tenant did not commit any default which would entitle the landlord to terminate the tenancy u/s 14, the tenant would not become the owner u/s 32 of the portion of the land left with him after termination of his tenancy u/s 31 and acquisition of the remaining portion by the landlord. Section 32-F must be read in the context of the momentous changes effected with regard to law relating to agricultural tenancies by Bombay Act 13 of 1956, which came into force on August 1, 1956. The said amendments were all intended, subject to certain exceptions, to confer the right of ownership on the persons actually cultivating or tilling the land. The measure was intended to meet the demands of long standing grievances of economists that tillers of the soil under the tenures in India had no substantial interest in the land which they cultivated; and that, to make the tillers have the necessary interest, both from the point of view of increasing the food supply and of improving the living conditions of the common people, it was necessary to make the tillers owners of the land. A locus paenitentiae was given to absentee landlords to obtain possession u/s 31 for bona fide personal cultivation. That was further extended by providing u/s 88-C by Maharashtra Act 9 of 1961 that if the landlord obtained a certificate showing that the total income of the landlord did not exceed Rs.

1500/- he could further make an application for recovering possession of the land for personal cultivation. The object of these amendments was to make the tillers of the land the owners unless the owners could obtain possession under the provisions of the Bombay Tenancy Act for personal cultivation. The purpose was to eliminate all intermediaries between the tillers of the soil and the State. One of the exceptions to this general rule was relating to minors, widows or persons subject to mental or physical disability with respect to whom special provisions were made under Sections 31 (3) and 32-F, Wednesday, March 29, 1972.

11. Section 31 (3) laid down inter alia that where a landlord is a widow, the notice of terminating the tenancy on the ground of bona fide personal cultivation may be given and the application for possession may be made by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist, subject to certain restrictions, which are contained in the Proviso which need not be dealt with for the purpose of this case. Section 32-F (1) (a) laid down:

"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 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under S. 31". The words "during which such landlord is entitled to terminate the tenancy u/s 31" are the key words to the interpretation of this section. It is now settled that a widow can make an application u/s 31. It is also clear that it is only the successor-in-title who can make an application within one year from the date on which her interest in the land ceases to exist u/s 31 (3). But such an application can be made only if the landlord bona fide requires the land for cultivating personally or for any non-agricultural purpose. Once the widow exercises the right u/s 31 (1) on the ground of requirement for personal cultivation the widow or her successor-in-title is not entitled to terminate the tenancy again on the ground that the landlord bona fide requires the land for personal cultivation in view of the provisions of Section 31-C.

12. It is nowhere contended on behalf of the widow that she wants to terminate the tenancy for any non-agricultural purpose. It is doubtful whether the words "such landlord" in Section 32-F (1) (a) would include a successor-in-title of the widow. But in the present case we are only concerned with the widow and once the widow has exercised the right u/s 31 it cannot be said that she has any further right to terminate the tenancy u/s 31 for personal cultivation. She has not stated that she wanted to terminate the tenancy for any non-agricultural purpose. Having regard to these facts, in my judgment, Section 32-F is not at all attracted in the case, and, u/s 32 (1-B) Proviso, as the application was made by the widow for obtaining possession of the land and it is rejected with regard to the remaining half with the tenant, the date on which the final order of rejection in

respect of that half was passed must be the postponed date for the purpose of tiller"s day u/s 32.

13. I am, therefore, of the view that the Deputy Collector and the Tribunal were right in holding that the tenants became the owners on the date of the final decision of the Revenue Tribunal on November 27, 1963. The Deputy Collector was, therefore, quite right in remanding the case for taking further action u/s 32-G and to fix price of the suit land in accordance with law.

14. In the result, both the petitions fail. Rule discharged. No order as to costs.

15. Rule discharged.