

(1989) 11 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 5592 of 1986

Tribhavandas Jeevraj Patel and Others

APPELLANT

Vs

Babu Govind Ghatal since (decd.) by his heirs and legal
representatives and Others

RESPONDENT

Date of Decision : 20-11-1989

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32K, 32K(3),
32M(2)
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 4

Citation : (1990) 1 BomCR 705 : (1990) MhLj 452

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : R.V. Desai, for the Appellant; K.N. Kore, for the Respondent

Judgement

H. Suresh, J.—Petitioner No. 5 was the owner of certain lands which are all agricultural lands referred to in this petition as "the suit lands". One Babu Govinda Ghatal (deceased) was the owner in respect of the suit lands. The present respondents Nos. 1 to 7 are the heirs and legal representatives of the said tenant and petitioners Nos. 1 to 4 are the purchasers of the suit lands from petitioner No. 5.

2. It appears that since the suit lands were covered by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act"), as on 1-4-1957, the deceased tenant was entitled to be declared as the owner of the suit lands. Thereafter, the proceedings under the Tenancy Act commenced and by an order dated 22nd May, 1959 the purchase price payable in respect of the suit lands was fixed as per section 32-G of the Tenancy Act. However, the deceased tenant did not pay any of the installments payable as per the said order. On 2nd November, 1965 the said deceased tenant made a statement before the Tahsildar that he was unable to pay the purchase price. Pursuant to this, an order u/s 32-P of the Tenancy Act was passed on 21st April, 1969 and possession of the lands which was all throughout with the tenant

was ordered to be given to the petitioner No. 5.

3. As the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as "the Restoration Act") came into force, the Tahsildar suo motu initiated proceedings u/s 4 of the Restoration Act. In that the Tahsildar came to the conclusion that the suit lands have to be transferred back to the tribal as the lands belonged to him under the law and an order to that effect was passed. Against the said order, petitioner No. 5 preferred an appeal before the Maharashtra Revenue Tribunal, which came to be dismissed by an order dated 27th January, 1985. It appears that the petitioners again preferred a review application before the Maharashtra Revenue Tribunal, which was also dismissed by the Tribunal. It is against these orders, the present writ petition under Article 227 of the Constitution of India has been filed.

4. Mr. Desai, appearing for the petitioners, submitted that in this case the tenant had made a categorical statement before the Tahsildar that he was not in a position to make any payment towards the purchase price fixed as per section 32-G of the Tenancy Act and that, therefore, after recording his statement to this effect, possession was ordered to be given back to the petitioner No. 5, therefore, as on the date the Restoration Act came into force, it can clearly be said that the lands never belonged to the tribal.

5. Mr. Desai further submitted that the lands which belonged to be tribal could only be ordered to be restored back to the tribal. According to Mr. Desai, in the present case, since the tenant had not paid the price fixed u/s 32-G of the Tenancy Act and had voluntarily made a statement that he was not in a position to make any payment towards the purchase price, and since pursuant to that statement, the lands had been given back to the landlord, which lands admittedly belonged to the owner landlord, the Restoration Act had no application whatsoever. In that connection, Mr. Desai has relied on a judgement given by Mr. Justice Pratap in the case of Yogendrasingh Harisingh Raghyvanshi v. Smt Kathibai Shankar Bhil, in Special Civil Application No. 5524 of 1976, wherein the learned Judge had, in a similar situation, quashed the order passed by the Tribal Authority on the basis that the respondents (tribals) were not the owners of the suit land, as they had not paid the purchase price and the land has been given back to the landlord. Mr. Desai also relied on a judgement of the Division Bench in the case of State of Maharashtra v. Khatua Makanji & Co. Pvt. Ltd. reported in 1987 MLJ 908, the facts of which case are identical to that of Yogendrasingh's case (supra). In the latter case also the tenant had made a statement that he was not willing to pay the purchase price of the land and on the basis of the said statement, the Tribunal had passed an order declaring that the tenant was not willing to purchase the land and that, therefore, the purchase had become ineffective. It is for this reason, the Division Bench held that the question of transfer can arise only if the agricultural land belonged to the tribal i.e. the title in the agricultural land vested in the tribal. The Division Bench further observed that inasmuch as the title in the disputed land never vested in

the tribal tenant, as purchase became ineffective at the very threshold when the statement was made that he was not willing to purchase the land, it was clear that the tribal had not transferred any agricultural land belonging to him, to the landlord, nor was the landlord deemed to have purchased the land during the material period and consequently sections 3 and 4 of the "Restoration Act had no applicability.

6. As against this, Mr. Kore, appearing for the respondents, pointed out that Mr. Desai had missed to take into account the amendment that was brought to the Tenancy Act, namely, sub-section (2) of section 32M read with sub-section (3) of section 32K of the Tenancy Act, which are as follows :

"32M (2) where the purchase of any land has become ineffective for default of payment in time of the price in lump sum or in installments, but the tenant-purchaser has nevertheless continued in possession at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964, then the purchase of the land shall not be deemed to be ineffective, until the Tribunal fails to recover the amount of the purchase price under sub-section (3) of section 32K."

"32K (3) If a tenant purchaser fails to pay the entire amount of the purchase price within the period fixed under the provisions of this section or is in arrears of four installments where the number of installments fixed is four or more, and all the installments in any other case, the amount of the purchase price remaining unpaid and the amount of interest thereon at the rate of 4% per cent. Per annum if any, shall be recoverable by the Tribunal as an arrear of land revenue."

7. Mr. Kore, therefore, submitted that unless the proceedings as contemplated under sub-section (3) of section 32K are completed, it cannot be said that the purchase had become ineffective. This amendment came into force on 7-5-1965. In the present case, it is clear that even though the purchase price was fixed as far back as on 29-5-1959, the tenant continued to be in possession till about 21-4-1969. Thus, on 7-5-1965 when this amendment came into force, he (the tenant) was in possession of the lands. He had, however, failed to pay the installments. Therefore, before any order could be passed in favour of the landlord, it was incumbent upon the authorities concerned to have made attempts to recover the amount as provided under sub-section (3) of section 32K of the Tenancy Act. That was never done. Therefore, it cannot be said that the purchase by the tenant had become ineffective, as has been contended by the petitioners. This amendment was considered by a Single Judge of this Court in the case of Trimbak Balwant Kulkarni v. Chahala Bhikha Rajput, reported in (1971) 73 BLR 537. The relevant observations are as follows :

"Section 32M (2) as amended deals with a case in which three conditions are to be satisfied. The first condition is that the sale in favour of the tenant must be declared ineffective. After the amendment of section 32M (1) no sale could be declared ineffective for the only reason that the tenant was in arrears of payment

of the installments. Before the amendment, such a sale could be declared ineffective upon the default committed by tenant in payment of four installments where the installments were more than four in number. But this is not one of the consequences of default after the amendment of section 32M (1). If therefore, on the mere ground that there is a default committed by the tenant, no sale could be declared ineffective, then condition No. 1 mentioned in section 32M (2) would not come into existence after the amendment of section 32M (1). Therefore, the provisions of section 32M (2) would not obtain in respect of any cases in which action was to be taken after the amendment of section 32M (1). Obviously therefore, it must mean that section 32M (2) was intended to operate in respect of orders of ineffectiveness passed before section 32M (1) was amended."

8. Mr. Desai submitted that in that case, the learned Judge was concerned with the question whether the amendment of section 32M was retrospective in nature. It is also true that in that case the question for declaring the sale as ineffective had arisen long before the Amending Act came into force. Still the learned Judge held that if the tenant had continued to be in possession as on the date when the Amending Act came into force, which is the second condition, such a declaration made earlier to the effect that the sale had become ineffective would be set aside and the Amending Act would apply. However, in the present case, admittedly, the sale was sought to be declared as ineffective on the basis that the tenant was not in a position to pay the purchase price after the Amending Act came into force. And all the while the tenant had continued to be in possession.

9. Mr. Desai submitted that this amendment has no application inasmuch as this is a case where the tenant had made a statement that he was not in a position to pay the purchase price and not that he made defaults in the payment of installments in the purchase price. But that should not make any difference. Here is a tenant, also a tribal and in all probability he is an illiterate person. Precisely to meet a situation of this type where the landlords could exploit the helplessness and illiteracy of the tenants and particularly the tribals, and extract statements from such tenant/tribals, the Amending Act had to be passed. Now by virtue of the Amending Act before the purchase could be declared as ineffective, all the procedure contemplated under the Amending Act has to be completed. The basic idea of the Tenancy Act is that the land must go back to the tiller and for that purpose it is necessary that he is adequately protected. It is not enough that his statement is recorded. In all such cases it must be considered whether the amount can be recovered as an arrear of land revenue. In the present case, the significant fact is that the tenant has continued in possession for over twelve years. The question is can it be said that though the tenant had continued to be in possession for twelve years, he was not in a position to pay the purchase price?. Mr. Desai submits that before the commencement of these proceedings, the Sub-Divisional Officer had himself reviewed the order dated 21st April, 1969 as he wanted to be satisfied that the land had been properly restored back to the petitioner No. 5, and he found no fault. According to Mr. Desai, this was done sometime in the year 1973 and when

the order was reviewed by the Sub-Divisional Officer, the tenant himself was present. In my view, it does not make any difference, as it is incumbent upon the authorities concerned to comply with the statutory requirements as provided under the Amendment. The presence of the tribal was of no consequence. In all probability, he would not have made such a statement, if he were made aware of his legal rights. Obviously, the Sub-Divisional Officer had not bothered to see that the statutory requirements under the Amendment were complied with. It that is so, I think, the order of review is of no consequence.

10. Mr. Desai stressed the point that in both the matters, namely, *Yogendrasingh Harisingh Raghuvanshi v. Smt. Kathibai Shankar Bhil* (supra) and *State of Maharashtra v. Khatau Makanji & Co. Pvt. Ltd.* (supra), the Court had reversed the order passed under the Restoration Act on the basis that the tenant had made a statement before the authorities concerned that he was not in a position to pay the purchase price and as a result of which, both the Courts held that the land did not belong to the tribal. I have gone through both these judgments. The amendment of sub-section (2) of section 32M and that of sub-section (3) of section 32-K did not come up for consideration by both the Benches. This has been expressly referred to by the Tribunal in its order and the order has been sustained mainly on the basis of the Amending Act. In the result, this petition cannot succeed. I pass the following order :

ORDER

Rule discharged. Petition dismissed. Petitioner to pay costs of this petition to the respondents.