

(2008) 09 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No. 6158 of 2002

Tukaram Maruti Chavan

APPELLANT

Vs

Maruti Narayan Chavan (Dead) by LRs. and Others

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 31, 31(1), 31(3), 32E

Citation : AIR 2009 SC 1126 : (2009) AIRSCW 335 : (2010) 1 ALT 3 : (2008) 6 BomCR 570 : (2009) 1 GLR 637 : (2008) 10 JT 378 : (2008) 12 SCALE 547 : (2008) 9 SCC 358 : (2008) 6 Supreme 703

Hon'ble Judges : Tarun Chatterjee, J;Aftab Alam, J

Bench : Division Bench

Advocate : K. Sarada Devi, for the Appellant; Siddharth Bhatnagar, Pawan Kumar Bansal, V.D. Khanna, Shivaji M. Jadhav, Makarand D. Adkar, Vijay Kumar and Vishwajit Singh, for the Respondent

Final Decision : Allowed

Judgement

Tarun Chatterjee, J.—This is an appeal by special leave against the judgment and order dated 9th of June, 1999 of the High Court of Judicature at Bombay in Writ Petition No. 4600 of 1983, whereby the High Court had affirmed the decision of the courts below.

2. The relevant facts leading to the filing of this appeal, as emerging from the case made out by the appellant may be summarized as follows:

3. The dispute arose out of the provision of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") relating to the land being Gat No 44, measuring 5 Hectares and 24 Acres in village Malangaon, Kavathe, Mahankal Tahsil of Sangli District in the state of Maharashtra (in short "the disputed land"). Late Smt. Narmadabai who was a widow, was the original landowner of the disputed land. She died in 1964 leaving behind her two sons Ramchandra and Laxman Bhau Sutar. On 1st of April, 1957, i.e. on the Tiller's Day, the Appellant was in cultivation of the disputed land. The original tenant

named Maruti died subsequently in 1994 during the pendency of the Writ Petition in the High Court of Judicature at Bombay. The original tenant had initiated proceedings u/s 32G of the Act before the Additional Tahsildar, Kavathe Makhnallal, and the case was decided in his favour with the purchase price of the disputed land being fixed. Thereafter, one of the heirs of the deceased landowner Narmadabai, named Laxman, preferred an appeal to Appellate Authority against the said order. After the matter was remanded back to the Additional Tehsildar, again an order affirming the previous position was passed in favour of the tenant u/s 32G. This time, the other heir of Late Smt. Narmadabai, namely Ramchandra, challenged the said order before the Sub-Divisional-Officer, Miraj, and he again by his order dated 31st of March, 1978, remanded the matter to the Tahsildar for a detailed enquiry and decision on the following points:

(1) The clear title of the disputed land of the applicant Ramchandra should be enquired.

(2) The point of giving notice u/s 32F of the Act to the landlord and the Agricultural Lands Tribunal should be enquired as per the provisions u/s 32F of the Act.

4. When the matter came up before the Tahsildar, he passed an Order holding the 2nd Respondent as the sole owner of the disputed land. The purchase of the disputed land by the Appellant was therefore declared to be ineffective for want of notice u/s 32F and the disputed land was ordered to be disposed of u/s 32P of the Act. Thereafter, the Appellant preferred a revision before the Maharashtra Revenue Tribunal but the same was dismissed. Being aggrieved by the decision of the Tribunal, the Appellant filed a Writ Petition before the Bombay High Court on 28th of December, 1983. The Bombay High Court by its impugned judgment and order dated 16th of April, 1999, dismissed the said Writ Petition on the ground that the Respondent (Ramchandra) was the sole owner of the disputed land in pursuance of the letters of administration obtained by him from the Civil Court. It is this decision of the High Court, which is impugned in this appeal in respect of which the Writ Petition was filed.

5. During the pendency of the Writ Petition before the High Court, Respondent No 2 executed a sale deed of the disputed land and though he was duty bound to inform the Court about this deed, he did not inform the same to the Court.

6. The main issue that was framed by the High Court in deciding the above-mentioned Writ Petition was whether giving of notice u/s 32F was mandated for the tenant and whether on failure of giving such notice, the tenant had lost the right of purchase and whether the orders of the Tahsildar, the Appellate Court i.e. the Sub Divisional Officer and the Revisional Court i.e. the Maharashtra Revenue Tribunal were liable to be interfered with. It was against this background that the High Court had held that Section 32F is mandatory in nature and there has to be a strict compliance of it. The High Court went on to say that inspite of the fact that the tenant had initiated proceedings u/s 32G and even if he had paid some

installments towards the price of the land, the same cannot be considered as substantial compliance resulting in dispensation of the mandatory requirement of Section 32F. Therefore, considering the fact that the tenant had failed in his duty to issue a written notice to the owner of the land i.e. Respondent No. 2, as required u/s 32 F, he has lost his right to purchase the disputed land. The Writ Petition was therefore dismissed by the High Court. Feeling aggrieved by the aforesaid decision of the High Court, this SLP was filed which, on grant of leave, was heard in presence of the learned Counsel for the parties.

7. We have heard the learned Counsel for the parties and examined the impugned judgment of the High Court and also the orders passed by the Tahsilder, Appellate Court and the Revisional Court. We find that the High Court noticed the provision of Section 32F of the Act, in so far as it is relevant, which reads as follows:

(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 32 within one year from the expiry of the period during which such landlord is 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 where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March, 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion].

(b) --- (omitted, as it is not relevant for our purpose).

(1A) A tenant desirous of exercising the right conferred on him under Sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

8. The High Court further went on to refer Section 31(3) of the Act, which so far as it is relevant reads as follows:

(3) Where a landlord is a minor, or a widow, or a person subject of mental or physical disability, then such notice may be given [and an application for possession u/s 29 may be made,]-

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in title of a widow within one year from the date on which her interest in the land ceased to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March, 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry, is satisfied that the share of such person in the land is separated having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.]

9. We have examined the aforesaid provisions of the Act on which the High Court had placed strong reliance. In our view, the interpretation given by the High Court in the impugned judgment of the aforesaid provisions cannot be faulted with. It must be said that the High Court in its impugned judgment, correctly noticed that Sub-section (3) of Section 31 provides that the landlord under disability and intending to exercise a right under this chapter shall give a notice terminating the tenancy and if the landlord is a widow then the notice can be given by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist. In the present case when the widow Narmadabai died, she ceased to have interest in the land and therefore the right of Ramchandra, as her successor-in-interest, to give notice u/s 31 to the tenant gets extended for one year from the death of Narmadabai, i.e. till the 12th of January, 1965.

10. The learned Counsel on behalf of the Appellant contended that if Section 31 and 32F are read together, then the tenant is not required to give any notice to the landlord because neither Narmadabai nor her successor-in-interest ever gave any notice to the tenant u/s 31 of the Act. Counsel for the Respondent on the other hand contended that Section 32F is a complete section in itself and the provision of the earlier sections cannot influence or have over riding effect. He therefore contended that whatever be the right of the landlord u/s 31, the same gets separated by virtue of the provisions of Section 32F. This contention was negated by the counsel for the Appellant arguing that Section 32 F cannot be said to have over riding effect on all the earlier sections. Against this backdrop, the High Court arrived at the following findings:

Sub-section (2) of Section 32F provides that the provisions of Section 32 to 32E (both inclusive) and Section 32G to 32R (both inclusive) shall so far as may be applicable, apply to such purchase. As against this, Section 32F begins with the wording `Notwithstanding anything contained in the preceding sections...'. Both these sections namely, Section 32F(1) and 32F(2) if interpreted in proper

prospective and harmoniously keeping in view the object of Section 32F, then it becomes clear that it could be said that Sub-section (2) of Section 32F is an exception to Sub-section (1) of Section 32F but at the same time it has to be borne in mind that exception carved out by Sub-section (2) is limited to the sections referred to in it, namely, Section 32 to 32E (both inclusive) and 32G to 32R (both inclusive). Since Section 31 is not included in Sub-section (2) of Section 32F and since Section 32F in Sub-section (1) provides 'Notwithstanding anything contained in the preceding sections', then it has to be held that right given to the landlord u/s 31 has nothing to do with the right given to the tenant u/s 32F for purchasing the land and consequently it has to be held that a tenant in this case was under legal obligation or statutory duty to give notice of his intention to purchase the land as contemplated u/s 32F.

The High Court further went on to observe:

...if Section 32F is held to be mandatory in its character then there has to be a strict compliance thereof. Secondly, that the tenant had initiated proceedings u/s 32G, that order was set aside by the SDO in the appeal and the matter was remanded for fresh enquiry in respect of the two points referred to above. Therefore, even if the tenant had initiated proceedings u/s 32G and even if he had paid some installments and the price of the land, the same cannot be considered as substantial compliance resulting in dispensation of the mandatory requirement of Section 32F....

11. Having heard the learned Counsel for the parties and after examining the judgment under Appeal as well as the orders of the other authorities, and other materials on record including the depositions of the parties before them, we are of the view that this appeal deserves to be dismissed for the reasons set out hereinafter:

12. In our view, the High Court correctly pointed out that the provisions of Section 32F are independent in nature and are separate from the provisions u/s 31 of the Act. The exception mentioned u/s 32F(1) to subsection (2) is limited to the sections referred to in it, i.e., from Section 32 to 32E (both inclusive) and 32G to 32R (both inclusive). Further the expression "Notwithstanding anything contained in the preceding sections" under Sub-section (1) of Section 32F are of paramount importance. Considering the fact that Section 31 is not included in the sections mentioned under Sub-section (2) of Section 32F, and the expression "Notwithstanding anything contained in the preceding sections" under Sub-section (1) of Section 32F, we are of the view that the right given to the landlord u/s 31 has nothing to do with the right given to the tenant u/s 32F for purchasing the land and consequently it has to be held that the appellant in this case was under a legal obligation or statutory duty to give notice of his intention to purchase the land as required u/s 32F. We also agree with the view of the High Court that even if the proceedings were initiated u/s 32G by the tenant initially, he cannot claim to be exempted from complying with the mandatory requirement of serving a notice to the landlord as contemplated u/s 32 F which mandated

under the Act and commands strict compliance thereof.

13. In the case of Anna Bhau Magdum (since deceased by L.R.'s) Vs. Babasaheb Anandrao Desai, , this Court held that there is no automatic purchase of a land by a tenant in cases where the landlord happens to be, inter alia, a widow and the right of purchase can be effective only when exercised in accordance with the provisions of Section 32F, i.e., by giving a notice in writing within a period of one year from the date on which the right of the landlord to terminate the tenancy comes to an end after the death of a widow. In the present case, therefore, the Appellant was duty bound to comply with the mandatory requirement to serve a notice intending to purchase the disputed land u/s 32F to the landlord as well as to the Tribunal. In the case of Appa Narsappa Magdum (D)Thr. Lrs Vs. Akubai Ganapati Nimbalkar and Ors, , this Court held that the intimation to be provided by the tenant u/s 32F(1) (a) has to be given according to the provisions laid down in the said section. This Court, in the said case, had negated the contention that the concerned Act, being a welfare legislation, enacted for the benefit of the tenants, should be construed in a liberal manner. The Court in its judgment stated in paragraph No. 4 that "We cannot accept this submission because language of the Sections 32F and 31 is quite clear and the period of one year will have to be counted in accordance with the said provisions and not from the date of the knowledge of the tenant. The provision of law being clear, we cannot in such a case, grant relief on the basis of equity." Again in Sudam Ganpat Kutwal P.A. Holder of Shankar Sitaram Bhosle Vs. Shevantabai Tukaram Gulumkar (dead) by LR Maruti Shankar Pachpute, , relying on counsel for the parties in their submissions, this Court has clearly summarized the position of law. The paragraphs relevant to this case are 23 (c) to 23 (e) which have been laid down herein:

23 (c) A landlord has a right to give notice and make an application for possession after terminating the tenancy, if he wanted the land bonafide for personal cultivation, provided the notice was served on the tenant on or before 31.12.1956 (with copy to the Mamlatdar) and application for possession u/s 29 was filed on or before 31.03.1957.

(d) A landlord widow also entitled to make an application for possession under Sub-section (1) of Section 31 of the Act. Sub-section (3) of Section 31, which is an enabling provision, extends the time within which the widow can seek possession u/s 31(1) of the Act, beyond 31.12.1956. As a result, where the landlord is a widow, then the notice required under Sub-section (1) of Section 31 may be given and the application for possession u/s 29 may be made by her so long as her interest in the land exists. Such notice can also be given by the successor-in-title of the widow within one year from the date on which the interest of the widow in the land ceases to exist.

(e) Where the landlord is a widow [and she does not exercise her right u/s 31(1) of the Act], the right to purchase under the deemed purchase is postponed till the expiry of the period during which such (disabled) landlord is entitled to

terminate the tenancy u/s 31(3). The tenant desirous of exercising such right shall, however, give an intimation in that behalf to the landlord and the Tribunal within one year thereafter, as required u/s 32F (1A).

Consequently, where the landlord, being a widow as on 1.4.1957, does not choose to terminate the tenancy for personal cultivation, the tenancy continues during her lifetime and on the death of the widow, her successor-in-title will have the right to terminate the tenancy within one year from the date of the death of the widow. The tenant has the right to purchase such land, u/s 32 within one year from the expiry of the period during which such successor-in-title of the widow is given the right to terminate the tenancy u/s 31 by giving an intimation as required u/s 32F(1A).

14. It is pertinent to mention here that the above-mentioned case has been cited by the Appellants to contend before us that the required notice u/s 32F is not mandatory in its nature. However we do not agree with this argument advanced by the learned Counsel appearing on behalf of the Appellants. The required notice is not mandatory only in a case when a widow land lady has already exercised her right u/s 31(1), i.e. when during her life time, a notice is served to the tenant that the landlady requires the land bonafide. Once a notice u/s 31(1) is served by such a widow landlady, the further benefit of Section 31 is not available. Paragraph No. 23(f) at page No. 210 of the above-mentioned case and paragraph No. 27 of the same are of relevance to illustrate our point.:

23.(f) Where a landlord, who is a widow, exercises her right of termination and secures possession of part of the tenanted land for personal cultivation u/s 31(1) of the Act, then there is no question of her successor-in-title giving a notice of termination within one year from the date on which the widow's interest ceases to exist. When Section 31 ceases to apply, Section 32F also will not apply and there is no need for the tenant to give any intimation u/s 32F.

27. Learned Counsel for the respondent relied on the decisions of this Court in *Amrit Bhikaji Kale v. Kashinath Janardhan Trade*, *Anna Bhau Magdum v. Babasaheb Anandrao Desai*, *Appa Narsappa Magdum v. Akubai Ganapati Nimbalkar* and *Balchandra Anantrao Rakvi v. Ramchandra Rukaram* to contend that the tenant has to issue a notice u/s 32F within the period prescribed and if he fails to do so, he loses the right to purchase the land and the landlord will become entitled to the same absolutely. These were all cases where the landlord under disability had not sought possession for personal cultivation u/s 31 and where admittedly, Sections 31(3) and 32F applied and consequently, there was an obligation on the part of the tenant to send an intimation u/s 32F(1A). None of the cases related to a widow landlord who had terminated the tenancy during her lifetime and taken possession of a portion of the tenanted land. Therefore, the said decisions will not apply.

15. The above-mentioned proposition clearly establishes the fact that with regard to Section 31(1), once a notice has been served under that provision, the further

benefit of Section 31 cannot be obtained by the legal heirs of the widow. But, in case when Section 31 has not been availed of by the widow as we can see in the present dispute, Section 31 would definitely apply.

16. The learned Counsel appearing on behalf of the appellant has argued before us that the Appellant could not serve a notice to the landowner since he was not sure about the title of the disputed land owing to a dispute between the two sons of Late Smt. Narmadabai who were claiming the title of the disputed land. We cannot accept this contention of the Appellant. The order passed by the Tahsildar, Kavathe Mahankal, lays down the fact that Shri Ramchandra, Respondent No 2 in this case, had produced a certified copy of the Judgment and order dated 28th of April, 1966, passed by the Joint Civil Judge Sr. in Misc. Application No 25 of 1965 in which it has been declared that Shri Ramchandra is the owner of the disputed land on the basis of the will executed by his mother Late Smt. Narmadabai. The appellant also in his deposition admitted that:

The owner of the said land was Smt. Narmadabai Bhau Sutar. Narmadabai died before 10/12 years. Ramchandra Bahu Sutar filed suit on the basis of will, and got transferred the land of Narmadabai in his name.

17. The original tenant, even after the second remand had clearly admitted before the same court in his statement dated 16th of March, 1981, that Shri Ramchandra alone had become the sole owner of the disputed land by virtue of the decision of the Civil Court on the strength of the will. Going by the above mentioned records, we are of the firm view that the Appellant had a complete knowledge about the title of the disputed land in question. Therefore his submission that he had no knowledge about the real owner, cannot be accepted.

18. Further for the sake of argument even if we assume that the Appellant had no knowledge about the title of the disputed land, nothing prevented him from serving a notice as to his intention of purchasing the land to both the brothers contesting for the disputed land or either one of them according to the provisions of Section 32F. This Court, in the case of Teja Singh and others Vs. State of Punjab and another, , has observed that in the matter of land acquisition, service of notice on one of the co-owners is necessary and will therefore be construed as service on all the co-owners. The appellant has argued that he had on more than one occasion conveyed about his willingness to purchase the land to both the brothers and that his intention to do so was known by both of them. However, it does not absolve him from the duty of providing a written notice in terms of Section 32F of the Act. Moreover, the Appellant himself admitted before the Tahsildar, Kavathe Mahankal, that he had not served any written notice to either of the two brothers mentioning his intention. This can be identified from the statement of the Appellant on the 8th of October, 1976 and the 16th of March, 1981 whereby he stated:

Narmadabai died before 10-12 years. I have not served the notice on the owners. I have informed them orally regarding the purchase from time to time. I

have not served notice in writing. There were disputes amongst the brothers. Because of that I could not serve the notice regarding the purchase of the land as per Section 32F. Due to no knowledge of law I am not aware of the service of the notice.

19. For the reasons aforesaid, we are of the view that the High Court was justified in passing the impugned judgment and there is no infirmity in the impugned order for which we can interfere with the order of the High Court. Since we have already held that the service of the notice u/s 32F was mandatory and by failure to serve such a notice under the said section, the Appellant had lost his right to claim the disputed land.

20. Accordingly the Appeal is dismissed. There will be no order as to costs.