

(2002) 11 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 3331 of 1989

Vijay Krishnaji Deshpande

APPELLANT

Vs

Guru Siddha Sidram Mhatre since deceased by his legal heirs
Sadashiv Guru Siddha Mhatre and Others

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

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

Citation : (2003) 1 ALLMR 1078 : (2003) 3 BomCR 296 : (2003) 2 MhLj 81

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Arvind Joshi, for the Appellant; A.A. Kumbhakoni, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—The petitioner is the legal heir of one Radhabai who was the original landlady of the agricultural land in question. These lands were cultivated by one Guru Siddha Mhatre as a tenant.

2. Before the Tiller's date i.e. 1-4-1957 Radhabai has made an application dated 25-3-1957 to the Additional Tehsildar for possession of the lands in question. This application was u/s 31" of the Bombay Tenancy and Agricultural Lands Act. She withdrew that application on 21-6-1958 i.e. after the Tiller's day. Thus her claim for possession came to an end. On 22-4-1961 the petitioner who is the adopted son of Radhabai became major. Radhabai died on 28-3-1962. The petitioner claims that the respondent tenant's right to purchase the lands in question was postponed u/s 32-F of the Bombay Tenancy and Agricultural Lands Act. According to the petitioner since the respondent tenant has not exercised the right of purchase within the postponed period prescribed by Section 32-F, the respondent is not entitled to purchase the lands at all.

3. On 19-6-1981, the tenant Gurusidhappa applied to the Collector, Solapur for fixing the purchase price of the lands in question. The. A.L.T. initiated

proceedings thereon and the notices were served on the landlord. Eventually, on 30-11-1982, the A.L.T. by its judgment and order fixed the purchase price at Rs. 2000/-.

4. The petitioner filed an Appeal which was decided by the Deputy Collector Solapur who dismissed it on 30th July, 1986. The petitioner then filed a revision application before the Maharashtra Revenue Tribunal, who by its judgment and order dated 21-12-1988 has dismissed the revision. It is against the order of the M.R.T. that the present writ petition is filed.

5. The only contention urged by Mr. Joshi, the learned Counsel for the petitioner, is that on 1-4-1957 Tiller's date the lands were held by Radhabai who was a widow. The petitioner was therefore immune from the respondent's right to purchase land for a period of two years after the demise of Radhabai. In other words, according to the petitioner the conferral of the statutory right to purchase the lands in question was postponed till 20-3-1964. Therefore, the respondent not having exercised the right to purchase the lands within a period of two years and having made an application on 17-6-1981, he has no right to purchase the said lands.

6. There is no doubt that the contention on behalf of the petitioner would have been tenable ordinarily where the widow had not exercised the right to terminate the tenancy and seek possession of the lands in question before 1-4-1957. It is settled law vide the judgment of the Supreme Court in the case of Appa Narsappa Magdum (deceased through legal heirs) v. Akubai Ganapati Nimbalkar and Ors. reported in (1999) (2) Bom.L.R. 730 that a tenant is bound to exercise his right to purchase the land within two years of the death of the widow. If that is not done, the tenant is not entitled to make such an application.

7. In the present case, however, it is clear that Radhabai had filed an application 25-3-1957 to get possession of the land u/s 31 of the Bombay Tenancy and Agricultural Lands Act and this application was withdrawn on 21-6-1958. In such a situation it is settled law that the conferment of the right to purchase would be postponed only till the termination of the application vide Nago Dattu Mahajan v. Smt. Yeshodabai Huna Mahajan reported in 78 Bombay Law Reporter 427, In that case the facts of the case were similar to the present case. The landlady who was the widow had applied for possession of the land for personal cultivation before 31-3-1957 u/s 31 read with Section 29 of the Act. The application was rejected on 26-12-1958. The Division Bench held that if the right to terminate tenancy and seek possession is exhausted by the landlord, the landlord cannot avail of Section 31(3) in spite of being disabled landlord. As a result Section 32-F(1)(a) is also inapplicable. The Division Bench has observed as follows :

"Such landlords thus have a choice to avail of either of these two provisions for resumption, i.e. Section 31(1) or Section 31(3), exercise of which depending on the circumstances in which each of them finds himself. No landlord, however, can avail of both the provisions, Section 31 having been designed to afford only one

last opportunity of resumption. Any such landlord thus cannot seek resumption u/s 31(3) again if he or she has availed of the right u/s 31(1). Section 32-F(1)(a) being merely corollary and counterpart of Section 31(3) its application also would depend on such landlord's choice and competency to avail of the provisions of Section 31(3), Consequently its provision cannot be attracted when the right to resume u/s 31(1) is availed of and one such opportunity is exhausted by such disabled landlord. Section 32-F(1)(a) cannot be attracted indiscriminately merely because tenant's landlord happens to be a disabled landlord, i.e. a minor, widow, etc., as specified in these two Sections. Section 32-F(1)(a) thus will not be attracted, when the widow or any other such disabled landlord seeks resumption u/s 31(1) before March 31, 1957, without regard to whether he or she fails or succeeds in the attempt. It will not apply even if such an application for resumption is rejected. Due to exhaustion of such right, the landlord cannot avail of Section 31(3) in spite of being a disabled landlord. In application of Section 31(3) results in application of Section 32-F(1)(a) also. Like the tenants of every other landlord applying u/s 31(1), the tenant of such a landlord also would become an automatic purchaser of the lands on the date of final rejection of such application, as under the first proviso to Section 32(1)(b)."

8. Mr. Joshi, the learned Counsel for the petitioner, submitted that there is appreciable difference between the case of Nago Dattu Mahajan (supra) and the present case. According to the learned Counsel Radhabai had withdrawn the application u/s 31 whereas in the case before the Division Bench, the landlady's application for possession was rejected. The difference is without distinction. The Division Bench categorically observed that Section 32-F(1)(a) is not attracted when the widow or any such other disabled landlord seeks resumption u/s 32(1) before 31-3-1957 without regard to whether he or she fails or succeeds in the attempt. The ratio of the decision is clearly that if the landlord has availed of and exhausted the right of resumption, the landlord cannot be treated as disabled landlord since the fact that he or she is able is established by fact of his or her having made an application. In fact the Division Bench has observed that due to exhaustion of such right, the landlord cannot avail of Section 32-F(1)(a). Therefore, it makes no difference if the landlord's or landlady's application is abandoned as withdrawn instead of being rejected. In either case the remedy is exhausted and the landlord or landlady cannot be treated as disabled. In view of the matter, there is no merit in the petition. The petition is dismissed. Rule is discharged. There shall be no order as to costs.