

(1970) 09 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No. 1364 of 1966

Vishnu Ganu Patil

APPELLANT

Vs

Maruti Santu Kurade

RESPONDENT

Date of Decision : 02-09-1970

Acts Referred:

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

Citation : (1971) 73 BOMLR 555 : (1971) MhLj 857

Hon'ble Judges : Deshpande, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deshpande, J.—This case raises a short question as to the true interpretation of the proviso to Sub-section (3) of Section 82G of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as the "Act". The petitioner is admittedly tenant of Survey No. 149/3 situate at village Ispurli. The respondents are the landlords. As the petitioner was found to have been in possession of this land as tenant on April 1, 1957 the Agricultural Lands Tribunal at Karvir, hereinafter referred to as the Tribunal, proceeded to act u/s 32G of the Act, Individual notice was served on the tenant. He was called upon to appear before the said Tribunal on March 22, 1963. The tenant, however, remained absent. On May 7, 1968 the Tribunal declared that the purchases by the tenant of this land had become ineffective in terms of Section 32G (3). This order was communicated to the tenant on June 6, 1963 as required under the proviso. On July 4, 1963 the tenant made an application requesting the Tribunal to review the order dated May 7, 1963 well within sixty days as permitted by the said proviso. This application was rejected by the Tribunal on December 18, 1963. The same is confirmed on August 20, 1964 in appeal and on January 5, 1966 in revision to the Maharashtra Revenue Tribunal. All the Courts below rejected the tenant's application on the ground that he did not satisfactorily explain his absence at the date of hearing by showing any reasons.

2. The Tribunal also says that the tenant has not asked for the review of the earlier order dated May 7, 1968. This is clearly a case of misreading of the application which is not very happily drafted. The title of the application itself indicates that it was for review u/s 32G. The grievance made in the application in so many words is that the order in regard to Survey No. 149/1 has been wrongly made in his absence. A statement of the tenant also appears to have been recorded by the Tribunal in which he has prayed in so many words that the earlier order dated May 7, 1963, should be reviewed. The only real question that arises for consideration is whether such an application of the tenant for review within 60 days could have been rejected merely because he did not care to explain his absence, on the date of hearing.

3. Sub-section (1) of Section 32G contemplates the publication of a public notice by the Agricultural Lands Tribunal, as soon as may be, after the tillers' day and then also requires the Tribunal to issue individual notices to all tenants and landlords. Subsection (2) then requires it to record the statement of the tenant if he is willing to purchase the land. This obviously has to be done on the date fixed for hearing. Sub-section (3) then provides for the consequences of the default in appearance of the tenant or the tenant's unwillingness to purchase the land. Sub-section (3) and the proviso thereto may conveniently be quoted here :

(3) Where any tenant 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 :

Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

It is thus clear that the declaration of the purchase becoming ineffective made under Sub-section (3) is subject to the right of review, conferred on the tenant by the proviso thereto. The proviso firstly contemplates communication of such order to the parties, i.e. landlord and the tenant. It secondly contemplates consideration of the application for review, if made by the tenant within 60 days from the date of the communication to him. This proviso itself does not impose any further conditions or limitations. It does not require the tenant to explain his absence. Rejection of the tenant's application by the Tenancy Courts, therefore, for not stating the reasons of his absence is not warranted by the plain wording of this proviso. There does not appear to be any basis whatsoever for assumption of such requirement. This omission in this provision requiring the tenant to explain his absence is singularly in contrast with the other analogous provisions in several other enactments. The first proviso to Section 16 of the Mamlatdars' Courts Act authorises the Mamlatdar to re-hear the case on the defaulting party satisfying the Mamlatdar "that he was prevented by some unavoidable circumstance from attending..." Order IX, Rules 9 and 13 of the CPC empower the Court to set aside the order of dismissal for default or an ex-parte decree on

defaulting party satisfying the Court that he was prevented by any sufficient cause from appearing on the date of hearing. As against these requirements, the proviso to Sub-section (3) of Section 32G empowers the defaulting tenant to make an application for re-hearing or review without being further required to show any reasons or cause for his default in appearance.

4. Mr. Gole, the learned advocate appearing for the petitioner contends that if the review of the order passed under Sub-section (S) is not made conditional on proof of sufficient cause or good and unavoidable reasons for his absence at the hearing, the reasons are not far to seek. Mr. Gole contends, Legislature was not content with merely conferring right of purchase but has created machinery u/s 32G for initiating proceedings suo motu to fix the price and work out the rights. These rights are, however, made defeasible on the tenant's absence at the hearing as obviously no Tribunal can afford to stay its hands without any reason indefinitely. The Legislature has deliberately, therefore, provided one more opportunity to the ignorant and illiterate tenants who failed to appear at the fixed date for some reason or the other, as such absence results not only in their losing the right of purchase but it is followed by loss of tenancy rights themselves in the land and possession u/s 32P. I find much substance in this contention. Requirement in the proviso of communicating the order passed under Sub-section (3) to the tenant and, absence of any requirement to explain the absence in his review application supports Mr. Gole's contention. In no other section of this Act, authorising the Mamlatdar or Tribunal to decide disputes there is any provision requiring the communication of the order to the tenant. Right to review provided also is not subjected in any manner to any limitation which normally are attached to the right of review. I thus find considerable force in the contention that right of getting the order of the Tribunal reviewed conferred under this proviso is unlimited in its extent and is not conditional on tenants proving any sufficient cause or good reasons for his absence at the date of hearing.

5. Mr. Abhyankar, the learned counsel appearing for the respondent, contends that, tenant could have applied for setting aside the ex-parte order within thirty days, in terms of the proviso to Section 16 of the Mamlatdars' Courts Act. Failure to do so by the tenant has its consequences. Legislature could not have intended to grant a right of review to tenants after the expiry of such period without any limitation in total disregard of the rights accrued to the landlord consequent on tenant's failure to avail of the remedy u/s 16. Now, Section 72 of the Act in terms makes the provision of the Mamlatdars' Courts Act applicable to the proceedings before the Mamlatdar and Tribunal where the inquiries and proceedings are "commenced on the presentation of applications u/s 71" of the Act, on which by a fiction created by this section, such an application is to be treated as a plaint. It is, however, clear that proceedings u/s 32G cannot be said to have been commenced on the presentation of any application. These proceedings and inquiries are commenced, as stated earlier, on the initiative of the Tribunal itself. In such proceedings, it is not possible to conceive of any plaint

and plaintiff or defendant, effect of whose default in appearance can be said to have been dealt with under Sub-section (1} or Sub-section (2) of Section 16 of the Mamlatdars" Courts Act. Section 16 or any provision of the Mamlatdars" Courts Act, therefore, can have no application to the proceedings before the Tribunal u/s 32G. This is an additional explanation for the insertion of such a proviso to Sub-section (3).

6. Mr. Abhyankar says that the words appeal, revision and review are words of well known import, and absence of any limitations in the proviso itself cannot be relied on to strip it of its known limitation. This contention appears to me to be untenable. Word in a statute has to be construed from the context and setting in which it is used. Notions associated with the word in the different context cannot be imported for construing this proviso.

7. Mr. Abhyankar's reliance on the right of appeal available u/s 74(1)(mb) is misplaced. Rights of appeal and review are two independent remedies available to the tenant under different set of contingencies. The existence of the right of appeal cannot have the effect of curtailing the right of review beyond what the section creating the right of review itself warrants.

8. Mr. Abhyankar then contends that in either case the proviso to Sub-section (3) only confers right on the tenant to apply for review within 60 days. It does not cast any obligations on the Tribunal necessarily to allow it. The Tribunal must be deemed to have been vested with some discretion and such a discretion can be exercised by any Tribunal only when some good cause for non-appearance is shown. I do not find any merit in this contention. Close examination of Sub-sections (1) to (4) of Section 32G makes it clear that Sub-section (3) comes into play when the tenant fails to appear or he appears but expresses his unwillingness to purchase. Sub-section (4) deals with the contingency where the tenant is willing to purchase. The right of review contemplated under this proviso is really intended to set at naught the order passed by the Tribunal under Sub-section (3) declaring his right of purchase having become ineffective. Only limitation prescribed for such remedy is that application should be made within CO days of the communication. This does not admit of any other limitation. It shall have to be held that, no discretion is left with the Tribunal to reject such applications once it is found to have been made within sixty days. True, the proviso does not in so many words require the Tribunal to grant such application. But in the right conferred on the tenant to "apply for the review" is implicit an obligation on the Tribunal, to deal with it, and also to grant it if in time, when no discretion is found to have been left with it to reject it on any other ground whatsoever.

9. It is thus clear that rejection of petitioner's application for review by the three Courts below is unwarranted. I, therefore, allow this special civil application and set aside the orders passed by the three Courts below. The case is remanded to the Tribunal for disposal in accordance with law.

10. In the circumstances of the case, there will be no order as to costs.