

**(1991) 11 BOM CK 0016**

**In the Bombay High Court**

**Case No : Writ Petition No. 2474 of 1981**

Yashwant Pandharinath Bagal

APPELLANT

Vs

Waman Raghunath Inamdar and Another

RESPONDENT

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**Date of Decision : 27-11-1991**

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32R, 88C, 88D

**Citation : (1991) 4 BomCR 579**

**Hon'ble Judges : D.R. Dhanuka, J**

**Bench : Single Bench**

**Advocate : S.G. Subhana and S.G. Page, for the Appellant; S.G. Gokhale and K.J. Ayankar for respondent No.1, for the Respondent**

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## **Judgement**

D.R. Dhanuka, J.—By this petition filed under Article 227 of the Constitution of India, the petitioner tenant has impugned order dated 31st March, 1981 passed by the Maharashtra Revenue Tribunal, Pune (respondent No. 2 herein), in Revision Case No. MRT-NS-III.2/80 (TNC-B-103/80) and has sought restoration of the appellate order dated 30th January, 1980 passed by the Assistant Collector, Phaltan Division, Phaltan, District Satara, in Tenancy Appeal No. 25 of 1978, which order was set aside by the Tribunal (respondent No. 2 herein) in revision.

2. The crucial facts which are required to be stated for disposal of this petition are summarised as under :---

(a) The petitioner was the tenant of agricultural lands bearing Survey Nos. 319/46 and 355/2 since long and the said tenancy was subsisting on 1st April, 1957, i.e. the titler's day. The said lands are situate at Village Khatav, Taluka Khatav, District Satara.

(b) On 1st April, 1957, the respondent No. 1 landlord was a minor. The statutory purchase of the said lands was therefore, postponed till 1st March, 1965, on which date respondent No. 1 was to attain majority. Section 32(1) of the Bombay

Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act", for short), operates subject to other provisions of the Tenancy Act. Section 32-F of the Tenancy Act provides that where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have to exercise his right to statutory purchase of the land within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. The said section obligates the landlord to send an intimation to the tenant of the fact that he has attained majority in order to enable the tenant to exercise the right of statutory purchase conferred on him under the said section.

(c) On 31st March, 1962, the respondent No. 1-landlord obtained a certificate of exemption from the prescribed authority as contemplated u/s 88-C of the Tenancy Act, as a result whereof respondent No. 1 became a certificated landlord. During the subsistence of such certificate, section 32 to 32-R of the Tenancy Act are not applicable to the lands leased by a certificated landlord. Thus, even after attaining majority by the respondent No. 1-landlord, the petitioner tenant or his father could not exercise their right of statutory purchase and the said right was further postponed by operation of statute. Shri Pandharinath, the father of the petitioner, adopted proceedings for revocation of the certificate of exemption granted in favour of respondent No. 1 u/s 88-C of the Tenancy Act. On 14th April, 1966, the father of the petitioner made an application to the Commissioner, Pune Division, Pune, for revocation of the said certificate of various grounds. Section 88-C of the Tenancy Act prescribes qualifying conditions for grant of certificate of exemption. The said provision is meant for benefit of small landlords whose annual income does not exceed Rs. 1,500/.

(d) By an order dated 18th July, 1969, the Commissioner, Pune Division, Pune, revoked the said certificate of exemption dated 31st January, 1962. The said order of revocation was in terms effective from the date of the said order as set out therein. It is stated in the said order that the annual income of the respondent No. 1-landlord, including in respect of rent of the said lands, was more than Rs. 1,500/-. The Commissioner, Pune Division, Pune, passed the said order in exercise of the powers conferred under Clause (iv) of sub-section (1) of section 88-D of the Tenancy Act read with G.N.R.D. No. TNC 1383/44661-M dated 19th April, 1963. The said order became effective from 18th July, 1969, as a result whereof the provisions contained in sections 32 to 32-R of the Tenancy Act became applicable to the said lands with effect from 18th July 1969.

(e) Sometime in the month of October, 1969, the respondent No. 1-landlord filed a writ petition in this Court, numbered as Special Civil Application No. 2732 of 1969, impugning the order dated 18th July, 1969 passed by the Commissioner, Pune Division, Pune, revoking the certificate of exemption granted earlier in his favour on 31st January, 1962 as contemplated u/s 88-C of the Tenancy Act. By an order dated 16th August 1972, Vaidya, J., dismissed the said writ petition.

(f) The respondent No. 1-landlord made an application to the Additional Tahsildar

and Agricultural Lands Tribunal, Khatav, for a declaration that the statutory purchase in question by the petitioner-tenant was liable to be treated as ineffective in view of the provisions contained in section 32-F(1-A) read with section 32-G(3) of the Tenancy Act and for restoration of possession of the said lands. Sections 32-F(1) and 32-F(1-A) of the Tenancy Act provides that where the landlord was a minor, or a widow, or a person subjected to any mental or physical disability, the tenant concerned desirous of exercising the right of statutory purchase conferred on him under sub-section (1) of the said section shall give an intimation to the landlord and the Tribunal in the prescribed manner within a period of one year from the expiry of the period during which such landlord was entitled to terminate the tenancy u/s 31. The said section obligates the landlord to send an intimation to the tenant of the fact that he had admitted majority before the relevant date. By an order dated 10th February, 1978, the Additional Tahsildar and Agricultural Lands Tribunal, Khatav, held that the statutory purchase of the said lands by the petitioner-tenant was liable to be treated as ineffective, as the petitioner had not sent any intimation to the respondent No. 1 landlord of his intention to purchase the said lands before 1st March, 1967 or before 17th October, 1971. It was also recorded in the said order that the record of the proceedings pertaining to the proceedings u/s 32-G of the Tenancy Act commenced in 1963 were not available. It was the case of the petitioner tenant throughout that the petitioner had sent the necessary intimation to the respondent No. 1-landlord as contemplated u/s 32-F(1-A) read with section 32-G of the Tenancy Act on 19th April, 1971, with copy endorsed to the Tribunal. A copy of the said notice was marked as an exhibit in the proceedings. In view of the alleged discrepancies in the deposition of the petitioner-tenant in this behalf as discussed in the said order, the Additional Tahsildar and Agricultural Lands Tribunal held that it was not proved that the above referred intimation was sent by the tenant to the landlord as alleged.

(g) Being aggrieved by the said order, the petitioner-tenant filed an appeal before the Assistant Collector, Phaltan Division, Phaltan. The said appeal was numbered as Tenancy Appeal No. 25 of 1978. The question as to whether the petitioner had sent notice dated 19th April, 1971 to the respondent No. 1-landlord and a copy thereof to the tribunal is of considerable relevance. On this aspect, after analysing the evidence, the Assistant Collector accepted the case of the petitioner in respect of sending of intimation dated 19th April, 1971. The Appellant Authority observed in its order that the copy notice tendered by the petitioner in evidence as an exhibit had been endorsed by the Agricultural Lands Tribunal. The Appellate Authority observed that it could not be forgotten that the record of the case was required to be reconstructed and it was a case where number of important papers could not be found. It was also observed by the Assistant Collector in his judgment that the petitioner-tenant had been keep to purchase the lands and had adopted proceedings from time to time seeking cancellation of the certificate of exemption granted in favour of the respondent No. 1-landlord u/s 88-C of the Tenancy Act. The Appellate Authority held that the

tenant had forwarded the necessary intimations to the landlord and to the Tribunal as required. The Appellate Authority concluded that the petitioner had therefore, become a deemed purchaser of the said lands on 22nd December, 1972. By the said order, the Assistant Collector remanded the matter to the Additional Tahsildar and Agricultural Lands Tribunal for fixation of statutory purchase price. The finding of fact regarding issue and service of the notice intimating his decision to purchase the lands as recorded in the order of the Appellate Authority was reasonable. The said finding of fact has acquired finality.

(h) Being aggrieved by the above-referred appellate order, the respondent No. 1-landlord preferred revision application before the Maharashtra Revenue Tribunal, Pune (respondent No. 2 herein). It is obvious from the impugned order of the Tribunal that the Tribunal presumed that the notice dated 19th April, 1971 was actually issued by the tenant and served on the landlord and the tribunal. After making such presumption and without reversing the finding of fact recorded by the Appellate Authority in this behalf, the Tribunal proceeded to deal with the question as to whether the said notice dated 19th April, 1971 was liable to be considered as premature in view of the fact that Special Civil Application No. 2732 of 1969 filed by the respondent No. 1-landlord impugning the order dated 18th July, 1969 was dismissed only on 16th August, 1972. The Tribunal appears to be of the view that the revocation of the certificate of exemption became effective only from 16th August 1972 and accordingly service of such notice by the tenant on the landlord expressing his desire to purchase the lands issued on 19th April, 1971 was of no consequence in law.

3. Smt. Gokhale, the learned Counsel for the respondent No. 1-landlord, has raised the following contentions at the hearing of this writ petition :---

(1) Revocation of certificate of exemption became effective from 16th August, 1972 and not from 18th July, 1969. Accordingly, even if it were to be assumed that the notice dated 19th April, 1971 was issued by the petitioner-tenant to the respondent No. 1 landlord, with copy endorsed to the tribunal, such alleged notice cannot be treated as compliance of the obligations of the tenant contained in section 32-F(a) and 32-F(1-A) of the Tenancy Act. The tenant could issue the requisite notice of purchase only after 16th August, 1972 and not earlier.

(2) No notice was in fact issued by the petitioner tenant on 19th April, 1971 or was in fact served on the respondent No. 1 landlord as alleged by the petitioner. The finding of fact recorded in this behalf by the Additional Tahsildar and Agricultural Lands Tribunal is incorrect. The finding of fact recorded by the Assistant Collector, Phaltan Division, Phaltan, in Tenancy Appeal No. 25 of 1978 is liable to be reversed.

(3) It is held that no notice or intimation was sent by the petitioner-tenant to the respondent No. 1-landlord exercising his right to purchase the said lands within the period specified u/s 32-F(1-A) of the Tenancy Act, the petition shall have to be dismissed.

4. The learned Counsel Smt. Gokhale appearing for the respondent No. 1-landlord relied upon the Full Bench judgment of our High Court in the case of Vishnu Shantaram Desai Vs. Indira Anant Patkar and Another, in support of her submission that the provisions contained in section 32-F of the Tenancy Act prescribed special procedure for exercise of a right to purchase land conferred upon a tenant by section 32, in case the landlord belonged to one of the categories specified in the said section. The learned Counsel relied upon the judgment of the Hon'ble Supreme Court in the case of Sharif-ud-din Vs. Abdul Gani Lone, in support of her contention that the provisions contained in section 32-F(1-A) of the Tenancy Act must be held to be mandatory. The learned Counsel submitted that the order passed by the Commissioner, Pune Division, Pune, revoking the certificate of exemption acquired finality only after disposal of the writ petition filed by the respondent No. 1-landlord and thus service of any notice before disposal of the writ petition, if any, was of no consequence, as no such notice could be issued until 16th August, 1972. The learned Counsel relied upon the Division Bench judgment of our High Court in the case of Bapu Dnyanu Patil v. Sadashiv Ramchandra Joshi 1968 (71) Bom.L.R. 402 in support of the proposition that there was a clear nexus in the Tenancy Act between the classification of landlord under disability and those not under disability and the purpose for which the said classification was made.

5. The learned Counsel for the respondent No. 1 landlord also referred to section 88-D(2) of the Tenancy Act in support of her submission that the statutory purchase had become ineffective on account of failure on the part of the petitioner-tenant to serve the requisite notice as contemplated under the said section.

6. I agree with the Assistant Collector, Phaltan Division, Phaltan, the appellate authority, when he observed during the course of his order dated 30th January, 1980 passed in Tenancy Appeal No. 25 of 1978 that the petitioner-tenant had declared his intention to purchase the lands within the period prescribed u/s 88-C of the Tenancy Act. The Tribunal has proceeded to dispose of the revision application on the presumption that even if the said notice dated 19th April 1971, was served, such notice shall have to be considered as premature, in view of the fact that the writ petition by the High Court challenging revocation of the certificate of exemption was dismissed only on 16th August, 1972. A copy of the said notice was exhibited before the prescribed authority. The copy of the said notice bore an endorsement by the Agricultural lands Tribunal. Even if two views were possible on the disputed question of fact as to whether the notice dated 19th April, 1971 was sent by the petitioner tenant to the respondent No. 1 landlord and to the Tribunal or not, the finding of fact recorded in Tenancy Appeal No. 25 of 1978 was a reasonably possible finding. The said finding was properly arrived at by the Appellate Authority. It is not correct to state that the revocation of the certificate of exemption became operative after disposal of Special Civil Application No. 2732 of 1969 by the judgment of our High Court delivered on 16th August 1972. The order of revocation was passed by the Commissioner,

Pune Division, Pune, on 18th July, 1969. Section 88-D(1) of the Tenancy Act clearly provides that the prescribed authority must specify the date from which such revocation shall become effective in its order itself. The Commissioner, Pune Division, Pune, exercising the powers of the State Government to specify in his above referred order that the said revocation shall be effective from 18th July, 1969. The writ petition was filed by the respondent No. 1-landlord only in October 1969. The question to be asked is, can it be said that the said order dated 18th July, 1969 was not effective between 18th July, 1969 and the date of filing of the petition ? The answer is obviously in the negative. The said certificate of revocation was not required to be confirmed by the High Court. The only effect to the order of the High Court dismissing the writ petition was that if found the order of revocation of the certificate as valid and did not accept the challenge made by the respondent No. 1-landlord to the said order of revocation. It is, therefore, not correct to state that no notice of purchase could be issued exercising the right to purchase the said lands before 16th August, 1972. It is impossible to agree with the view taken by the tribunal that the said notice dated 19th April, 1971 must be held as premature and ineffective. The said notice was issued within a period of two years from the date of revocation of the said certificate of exemption and within a period of one year from the date by which the landlord could terminate the tenancy u/s 31 of the Tenancy Act. In my judgment, the petitioner tenant complied with his obligations to serve the necessary notice on the respondent No. 1-landlord as contemplated u/s 88-D(2) of the Tenancy Act. The petitioner could not exercise his right to purchase the said lands within a period of two years from the date of respondents No. 1 having acquired majority as the certificate of exemption granted u/s 88-C of the Tenancy Act operated during the period 31st January, 1962 until 18th July, 1969. During the subsistence of the certificate of exemption, sections 32 to 32-R of the Tenancy Act were not applicable to the lands. The only relevant provision applicable to this case is section 88-D(2) of the Tenancy Act. In my judgment, the petitioner tenant has complied with his obligation to serve the necessary notice within the specified period, i.e. the period of two years from the date of order passed by the Commissioner, Pune Division, Pune, revoking the said certificate. In this view of the matter, it shall have to be held that the impugned order passed by the Maharashtra Revenue Tribunal (respondent No. 1 herein) suffers from an error of law apparent on the face of the record. The Tribunal was clearly and patently in error when it observed that the certificate of exemption was revoked by the High Court by its order dated 16th August, 1972. A High Court did not revoke the certificate of exemption. The High Court had no power to do so. The High Court did not do so. The certificate of exemption was revoked by the Commissioner with delegated powers of the State Government. The High Court merely rejected the writ petition challenging the order passed by the Commissioner, Pune Division, Pune, which order of revocation had already become operative with effect from 18th July, 1969. Even if the said order of revocation of certificate of exemption was stayed during the pendency of the writ petition, it did not preclude the petitioner tenant from issuing and serving the

requisite notice as contemplated u/s 88-D(2) of the Tenancy Act. The petitioner was not precluded in law from issuing the notice of purchase.

7. Shri Surana, the learned Counsel for the petitioner-tenant, has also relied on the judgment of Pratap, J., (as he then was), in the case of Shrikrishna Subhana Horambale and Others Vs. Shripad Jiwaji Apate and Others, . In this case, it was clearly held by this Court that substantial compliance of the obligation to exercise the right of purchase by the tenant concerned was sufficient and the statutory purchase could not be declared ineffective in a case where the tenant had repeatedly expressed his willingness to purchase the land in the proceedings adopted u/s 32-G of the Tenancy Act. It is not necessary to pursue this line of discussion in this case, as in my judgment the requisite notice was duly issued and served both on the Respondent No. 1-landlord as well as on the Tribunal. The Appellate Authority was perfectly within its right to hold that the petitioner-tenant was not at fault and the petitioner had exercised his option in accordance with law.

8. In the result, the Rule is made absolute. The Assistant Collector, Phaltan Division, Phaltan, District Satara, shall now proceed to fix the purchase at the earliest possible and within a period of three months from the date of receipt of the writ, as far as possible. Having regard to the facts and circumstances of the case, there shall be no order as to costs.