

(1995) 11 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 3687 of 1982

Yeshwant Govind Botre

APPELLANT

Vs

Sadashiv Mahadev More and Others

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

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

Citation : (1996) 2 BomCR 548 : (1996) 98 BOMLR 277 : (1996) 1 MhLj 416

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Advocate : M.V. Sali, for the Appellant; M.A. Rane, for Ramesh D. Rane, for the Respondent

Final Decision : Allowed

Judgement

P.S. Patankar, J.—This petition under Article 227 of Constitution of India arises in view of the proceeds 32-F and 32-G of Bombay Tenancy and Agricultural Lands Act, 1948 (for short Bombay Tenancy Act) in the following facts :

2. One Haribai Vitthal Gosavi was landlady of the lands S. No. 81/3 admeasuring (2-A-16 gs), S.No. 80/2, admeasuring (1-A-5-Gs) and S. No. 113/1 (admeasuring 1-A-5-gs) situated at village Yelvadi, Taluka Khed, District Pune. The petitioner was the tenant thereof on tiller's day i.e. 1-4-1957 and many years prior thereto. However, as she was a widow, tiller's day was postponed by order dated 19-2-1960 by A.L.T. Khed. She died on 11-5-1973. She was staying at different village near Pandharpur (Solapur District). She was having no near relation i.e. son or daughter. No intimation was given to the village officer regarding her death. The respondents who are her husband's brother's sons, for the first time given information to the village officer of Yelvadi in writing on 5-7-1975 and for the lands in their favour. Accordingly mutation entry No. 180 was made on 6-12-1975. It came to be certified on 26-4-1976. The information thereof was given by them to the petitioner by letter dated 25-5-1976 to all

these heirs with a copy to the Tribunal that he wanted to exercise right of purchase. There is no dispute that they have received the notice.

3. Proceedings u/s 32-G read with section 32-F of Bombay Tenancy Act were started. A contention was raised that the petitioner has lost his right to purchase land in view of section 32-F(1-A) as he has not given notice within period of 2 years from the date of death of the landlady. On the contrary it was contended on behalf of the petitioner that mutation was effected on 6-12-1975 and certified on 26-4-1976 and he received the notice thereof on 21-5-1976 from respondents and therefore he has exercised the right within a period of one year from that date and he was entitled to purchase. The Additional Tahasildar and A.L.T. Khed accepted the contention of the petitioner and held that he was entitled to purchase the land and fixed the purchase price u/s 32-G.

4. The respondents preferred appeal, which was heard by the Additional Collector, Pune. The Additional Collector held that as notice was not given to respondents heirs within a period of 2 years from the date of death of the widow-landlady, the provisions of section 32-F(1-A) have not been complied with and hence the petitioner is not entitled to purchase the land. The petitioner preferred revision and M.R.T. Pune by order dated 16-10-1982 confirmed the same. That is under challenge in this petition.

5. The learned Advocate appearing for the petitioner submitted that respondents, who claim to be heirs of the deceased widow Haribai, have not given any intimation regarding her death to the village officer and about acquisition of rights by them in the lands to the village officer as contemplated u/s 149 of Maharashtra Land Revenue Code, 1966. They informed the petitioner by letter dated 21-5-1976 and immediately the petitioner exercised his right to purchase the land by giving registered noticed dated 25-6-1976 to the respondents as well as to the Tribunal. He submitted that even assuming that the date of making mutation entry is taken as the date to commence the period of one year, even then the petitioner has exercised his right as contemplated under the provisions of section 32-F(1-A) of the Bombay Tenancy Act as mutation was effected on 6-12-1975. As against this the learned Counsel appearing for the respondents submitted that it was necessary for the petitioner to exercise that right and to give the necessary intimation as contemplated by section 32-F(1)(a) read with section 32-F(1-A) within 2 years of the death of the landlady. As this was not done the petitioner has lost his right to purchase the land. He relied upon the judgment of Full Bench of this Court reported in Vishnu Shantaram Desai Vs. Indira Anant Patkar and Another, . He further pointed out in case of minor-landlord. Such landlord has to give an intimation of his attaining majority for enabling the tenant to purchase the land, but such requirement is not there in the case of other categories and hence it is necessary to hold that the period begins to run from the date of death of the widow.

6. I shall first note the relevant provisions 32-F(1)(a) is as follows :

32-F(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 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 larger proportion.)

32-F(1-A). 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 :

Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969), has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act.

(2) The provisions of section 32 to 32-F (both inclusive) and sections 32-G to 32-R (both inclusive) shall, so far as may be applicable, apply to such purchase.

Section 32(I) deals with landlord's right to terminate the tenant's tenancy for personal cultivation and non agricultural purpose. Section 31(3) extends the period for giving notice and for filing application u/s 29 for getting possession. It says that i) a minor can file within 1 year after attaining majority, (ii) in case of successor in title of a widow within 1 year from the date on which her interest in the land ceases to exist. (iii) in case of person under physical and mental disability within 1 year of ceasing of such a disability. u/s 32(1)(a) the tenant can exercise the right within a period of one year after the period as contemplated by section 31 is over. Section 32-F(1-A) provides that any such tenant desirous of exercising the right should given intimation in that behalf to the landlord and to the Tribunal within the period specified in sub-section (1) of section 32-F(1). No doubt section 32-F(1)(a) makes specific provision of intimation in case of minor landlord as mentioned above, and in case of a widow or a person subject to

mental or physical disability, there is no such provision. But it is not necessary in the case of widow or landlord under physical or mental disability as the period would refer in case of disabled landlord from date of knowledge by tenant of its ceasing. The disabled landlord must show the date of such knowledge so that period would start running. In case of widow landlady, section 31(3)(ii) says that successor in interest of a widow can ask for possession u/s 29 within 1 year from the date on which her "interest in the land ceases to exist". The successor in interest must show the date on which widow ceased to have interest and his right was created. That date could be when the mutation is made. The tenant then comes to know who is/are successor/s in interest and to whom notice u/s 32-F(1-A) is to be given. It is necessary that this provision should be read reasonably so as to advance the object of the enactment and not to frustrate the same. This enactment is designed with a view that the tenants on the tiller's day become owners of the lands. In the absence of such knowledge regarding heirs, it is not possible for a tenant to give intimation as contemplated by section 32-F(1-A) to the new landlords or successors in interest of the widow. In section 32-F(1-A) the word "landlord" means the persons in whose name the land is mutated. In this case for the first time the mutation in favour of respondent had taken place on 6-12-1975 and the respondents were shown as owners. The petitioner has exercised his right by giving intimation to the respondent and to the A.L.T. on 25-6-1976. Therefore he has clearly exercised such a right within a period of one year from mutation entry dated 6-12-1975 in favour of respondents on which date widow ceased to have interest in the land and their rights were created. In my opinion in this case, petitioner has complied with the provisions of section 32-F(1-A).

7. The learned Counsel for the respondents relied upon the Full Bench judgment of this Court reported in (1971) 73 Bom.L.R. 793, (cited supra). The main question involved in the said case was whether the provision of section 32-F are in addition to section 32 of the Bombay Tenancy Act or create additional right in favour of a tenant to purchase the land. It was held that section 32-F does not confer a right to purchase in addition to the right conferred by section 32. In a case covered by section 32-F, the provisions of section 32 apply only after an intimation is given as contemplated by section 32-F(1-A). It was observed "The two sections do not confer independent rights or opportunities to purchase land upon a tenant. Section 32-F prescribes a special procedure for exercise of a right to purchase land conferred upon a tenant by section 32 when either a landlord or tenant or both of them are under disability, such a tenant has only one right to purchase. He has to give an intimation u/s 32-F(1-A) and then the provisions of section 32 to 32-E (both inclusive) and 32-G to 32-R (both inclusive) apply to such purchase". The judgment has dealt with facts of 3 Special Civil Applications. The learned Counsel for the respondents relied upon the facts in Special Civil Application No. 1916/1965. It was the case where the land belonged to a land lady Lahanubai who was a widow on the tiller's day. She died on April 13, 1959. One Ganu Rama was a tenant of that land on the tiller's day. He too died in the

year 1960 leaving behind his 2 sons Rangnath and Balu who cultivated the land as tenants. Dispute existed as regards the claim as successor-in-title of widow Lahanubai between Ganpat Sahadu Gangarde and one Yeshwant Kondiba. Finally name of Ganpat was entered in the record of rights on 9-10-1961, as successor in title of widow Lahanubai. On October 14, 1961, Ganpat (now landlord) gave a notice to Rangnath and Balu terminating their tenancy on the ground that he required the land for personal cultivation and ultimately made an application on 18-12-1961 for possession u/s 29 of the Act. In those proceedings, ignoring the objections of the tenants, the Tenancy Awal Karkun passed an order for delivery of possession of half of the land in favour of the landlord. The tenant preferred an appeal which was allowed by the Assistant Collector. The decision of the Assistant Collector was confirmed in revision by M.R.T. In the year 1964 proceedings were initiated u/s 32-G read with section 32-F of the Bombay Tenancy Act for determination of the price payable by the tenants. The tenants, however, had not give any notice as provided by section 32-F(1-A) intimating their desire to exercise their right to purchase the land. The Agricultural Lands Tribunal took the view that as no such intimation was given by the tenants contemplated by section 32-F(1-A) the purchase by the tenant has become ineffective. This was confirmed by the Assistant Collector and in Revision by M.R.T. The tenant preferred the petition under Article 227 of Constitution of India and the Full Bench in that respect has observed as follows:

"The period so prescribed for termination of tenancy by the successor-in-title cannot be extended merely because there existed a dispute as regards who is her successor-in-title. Under sub-section (1-A) read with section 32-F(1)(a) it was obligatory upon Rangnath and Balu (sons of deceased tenant Ganu) to give intimation of their desire to purchase land to the landlord and the Tribunal within a period of one year from the expiry of the period during which the successor-in-title of widow Lahanubai could have terminated the tenancy u/s 31. Such an intimation they failed to give and they thus failed to exercise their right to purchase. The Agricultural Lands Tribunal, the Assistant Collector and the Maharashtra Revenue Tribunal were, therefore, right in taking the view that the tenants failed to exercise their right to purchase and the land had to be disposed of in accordance with the provisions of section 32-P of the Act. "In view of this Special Civil Application was dismissed. However, this has no application in the present case. In this case though mutation was made on 9-10-1961, the proceedings commenced at the instance of tenant in 1964 and no intimation at all was given as provided by section 32-F(1-A). There was no question from what date the time begins to run."

8. The record here shows that the landlady Haribai was staying at different place near Pandharpur. She died issueless .There was no near heir left by her. The respondents are her distant relations. They came forward for the first time and claimed the lands and gave the intimation about their right to the concerned village office on 5-7-1975 and the mutation was affected on 6-12-1975. It was not at all possible for the petitioner to give the notice/intimation without knowing

their names.

9. In my opinion, the ratio of Full Bench judgment in the case of Vishnu Shantaram, (cited supra) is not at all attracted in the facts of the present case. It was not the case before the Full Bench where the notice or intimation u/s 32-F(1-A) was given and the question arose whether it was given within the period or not. It was a clear case where no such intimation at all was given. The phraseology used in section 32-F and in section 32-F(1-A) cannot be construed too technically to frustrate the legislative intention or to reduce the provision to futility more so where the enactment is dealing with the agrarian reform and designed to make a tiller on tiller's day owner of the land. If the argument of the learned Advocate for respondents is accepted then that can easily defeat the object of the enactment. Take the case where widow dies, her heirs have to keep quiet for 2 years and then claim the land. If the tenants on tillers' day thereof tries to exercise his right, a simple answer to frustrate that right is that no intimation is given u/s 32-F(1-A). This cannot be countenanced as intimation is not to be given in vacuum, but to an individual. This can be done when names of successor in-interest are recorded to the land in the revenue record. It is necessary to interpret these beneficent provisions reasonably and purposefully to advance the object of the legislation.

10. Hence the following order :---

The impugned judgment and order dated 16-10-1982 passed by M.R.T. Pune in Revision No. M.R.T. P.XI 7/80 T.E.N.B. 341/80, Pune arising out of Tenancy Appeal No. 6/1978 are set aside. The judgment and order passed by the Additional Tahasildar and A.L.T. Khed dated 30-11-1977 in No. T.N.C./32-F/Yelwadi/10/77 is restored.

Rule absolute accordingly.

In the facts and circumstances of the case, there shall be no order as to costs.