

CASE NO.:

Appeal (civil) 1823 of 1998

PETITIONER:

Ramakant Dattatraya Deshpande

RESPONDENT:

Dadu Bhagoji Patil (D) thru. LRs. & Ors.

DATE OF JUDGMENT: 12/12/2003

BENCH:

Shivraj V. Patil & D.M. Dharmadhikari.

JUDGMENT:

J U D G M E N T

Dharmadhikari J.

The petitioner is 'landlord' of the lands involved, within the meaning of provisions contained in Chapter III of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'). The petitioner feels aggrieved by the impugned order dated 17th November 1997 of the learned Single Judge of the High Court of Bombay whereby, reversing concurrent findings and orders of the three forums under the Act, the case has been remanded to the original authority, i.e. Additional Tehsildar A.L.T., Karvir, District Kolhapur for deciding afresh the proceedings initiated under Section 32G of the Act.

The provisions of the Act came up for consideration of this Court in the case of Patel Chunibhai Dajibhai etc. vs. Narayanrao Khanderao Jambekar & Anr. [(1965) 2 SCR 328], Amrit Bhikaji Kale & Ors. vs. Kashinath Janardhan Trade & Anr. [(1983) 3 SCC 437] and Balchandra Anantrao Rakvi & Ors. vs. Ramchandra Tukaram (D) by LRs & Anr. [(2001) 8 SCC 616]. In the case of Balchandra Anantrao Rakvi & Ors. (supra), the scheme of the Act was examined and it was stated :-

'the scheme of the Act gives effect to the policy "land for the tiller" by clothing all the tenants with the right of ownership of the lands cultivated by them personally. A twofold strategy is adopted in the Act - first, by making every tenant a 'deemed purchaser' of the land personally cultivated by him under Section 32 of the Act and secondly, by conferring on the tenant, in specified cases, the right to purchase the land from the landlord, under Section 32 of the Act, held by him under personal cultivation'.

The case of the landlord before the authorities was that on "Tillers' Day" i.e. on 1st April 1957, he was minor and, therefore, in his case the "Tillers' Day" gets postponed till the expiry of period of one year from the date he attained majority. Before the authorities under the Act, he had proved his date of birth from School Leaving Certificate to be 18.2.1954 and, therefore, he became major on 18.2.1972. The landlord's case is that during his minority the original respondent-tenant (now deceased and represented by his Legal Representatives) had defaulted in payment of agreed rent consecutively for more than three agricultural years. His tenancy, therefore, was terminated in accordance with the provisions of Section 31 read with Section 14 of the Act by notice dated 17.1.1961. After termination of the tenancy, the landlord, through his natural guardian mother, instituted proceedings under Section

29(2) of the Act in the Court of Tenancy Aval Karkun, Taluka Karvir, (registered as Tenancy Case No. 15 of 1969) and obtained an order dated 31.12.1969 in his favour directing the tenant to handover possession of the agricultural lands involved being Revenue Survey Nos. 60 & 61 (now Block No. 131) in Village Arale. It is submitted that in the order passed in proceedings for obtaining possession of the land, it was held that as the lands were given for sugarcane cultivation, in accordance with provisions of Section 43A, the provisions contained in Section 32 of the Act conferring status of 'deemed purchaser' on the tenant on the "Tillers' Day" were not applicable.

The order dated 31.12.1969 of the Tenancy Aval Karkun, Taluka Karvir, allowing application of the landlord for grant of possession on the basis of termination of tenancy were challenged by the tenant in appeal which was allowed. The landlord then preferred a revision petition before the Maharashtra Revenue Tribunal which was allowed by order dated 13.8.1973. The Tribunal held in favour of the landlord that the lands involved having been given for sugarcane cultivation, the provisions of Section 32 conferring status of 'deemed purchaser' were not attracted. It was also held that as the landlord was a minor and during minority through his guardian had terminated the tenancy and obtained possession of the lands, the tenant did not become 'deemed purchaser' under Section 32 of the Act.

On behalf of the landlord reliance is also placed on the order passed in his favour on 13.11.1972 by Tenancy Aval Karkun, Taluka Karvir, whereby on his application under Section 88C of the Act, exemption certificate was granted to the landlord on a finding that the lands comprised in survey numbers constitute 'an economic holding' as defined in Section 2(6A) of the Act of which the total annual income to the landlord, including the rent from such land, does not exceed Rs. 1500/-. It is submitted that the lands, which are 'economic holdings' having 'total annual income not exceeding Rs. 1500/-', on grant of a certificate to that effect, are exempt from application of provisions of Section 32 to 32R of the Act and on such holdings a cultivating tenant can claim no status of 'deemed purchaser' on the "Tillers' Day". Against the order dated 13.11.1972 granting certificate of exemption under Section 88C of the Act, the tenant went in appeal to the Court of Special Land Acquisition Officer, Tulshi Project (I) Kolhapur and the said appeal was dismissed in default by order passed on 14.4.1976.

Despite the above-mentioned orders directing grant of possession of the lands on termination of tenancy of the tenant, to the landlord, declaration of exemption under section 43A of the Act for the lands being on lease for sugarcane cultivation and grant of exemption certificate to the lands being economic holdings having less than prescribed annual income, Additional Tehsildar cum A.L.T. Karvir, initiated suo motu proceedings under Section 32G of the Act to enable the tenant to exercise right of purchase of the land in accordance with provisions of Section 32 read with Section 32F of the Act. The landlord produced all the previous orders mentioned above in his favour showing non-applicability of the provisions in Section 32 and 32F of the Act, termination of tenancy and obtaining of the possession of the land. On the above facts having been pointed out, the Additional Tehsildar cum A.L.T. Karvir recorded the fact that the lands having already been taken possession of on 26.5.1971 by the landlord after due termination of the tenancy and the proceedings having been become final, there was no justification to proceed under Section 32G of the Act. The Additional Tehsildar, therefore, dropped the proceedings by order dated 4.6.1978. Against the said order, appeal No. 39 of 1979 preferred by the tenant to the Special Land Acquisition Officer (I),

Kolhapur was rejected on 23.10.1981. The tenant thereafter approached by way of a revision petition to Maharashtra Revenue Tribunal, Kolhapur which also by its order dated 23.10.1983 dismissed the revision of the tenant and upheld the claim of the landlord by recording in his order the following conclusions :-

"After hearing both the sides and going through the record, it is an admitted fact that the tenant's actual possession is taken by the landlord under default proceeding. The contentions now raised is that on 1.4.1957 tenant has become deemed purchaser ought to have been taken in previous proceedings and if negatived rightly or wrongly as no further action is taken in that proceedings, it is binding on both the sides. If it was not taken in present inquiry it cannot be raised as there is record to show that default proceeding. There is also a difficulty in the way of the tenant, as could be seen, that the lands appear to have been leased for the purpose of sugarcane crop, page 71 M.R.T. order in No. KP \026 394/1972 decided on 13.8.1973 in default proceeding. So it has become final. So there is no merit in present revision. Hence following order is passed :

ORDER

Revision application is dismissed."

The tenant challenged the order of the Maharashtra Revenue Tribunal and all other orders of the lower authorities confirmed by it in Writ Petition No. 465 of 1984 in the High Court of Bombay. The High Court relied on the decisions of this Court in the case of Patel Chunibhai Dajibhai etc. vs. Narayanrao Khanderao Jambekar & Anr. [(1965) 2 SCR 328], Amrit Bhikaji Kale & Ors. vs. Kashinath Janardhan Trade & Anr. [(1983) 3 SCC 437]. By the impugned judgment it held that on the "Tillers' Day" i.e. on 1.4.1957, by operation of law in Section 32 of the Act the relationship of landlord and tenant between the parties ceased even though the landlord was a minor and after the "Tillers' Day" his tenancy was terminated. According to the High Court, all the proceedings of termination of tenancy have to be ignored as invalid in law. The High Court also observed at one place in its judgment that not all the lands involved were found to have been leased for sugarcane cultivation. The High Court, therefore, set aside all the orders passed by the Authorities under the Act and remanded the case to the original authority i.e. Additional Tehsildar cum A.L.T. Karvir to take up fresh proceedings under Section 32G of the Act.

Learned counsel Shri U.U. Lalit appearing for the landlord made strenuous effort by taking us through the scheme of the Act and various provisions of the Act to contend that where the landlord is a minor the statutory effect of deemed purchase on "Tillers' Day" under Section 32 gets postponed by virtue of the provisions contained in Section 31 and other provisions in the said Chapter III, till expiry of period of one year from the date of attainment of majority by the landlord. In the alternative, the learned counsel for the landlord submitted that the order passed granting delivery of possession to the landlord under Section 29, on termination of tenancy, declaration under Section 43A that the lands were leased for sugarcane cultivation and the exemption certificate granted under Section 88C for the lands as 'economic holdings' having prescribed limited annual income, had all attained finality. The High Court, therefore, was not justified in annulling all those orders of original, appellate and revisional authorities and setting aside the orders

dropping proceedings under Section 32G of the Act. It is submitted that the tenant had lost his right to purchase land by paying price to the landlord and, in fact, no such right was ever claimed by the tenant in initial proceedings instituted by the landlord under the Act.

The original tenant died during pendency of appeal in this Court and his Legal Representatives have been duly substituted on record. They have been served with notices of the appeal but no one appears to represent them. Since legal questions were involved and the impugned order of the High Court was in favour of the tenant, on our request, learned Senior Advocate Shri Ashok Desai appeared as amicus curiae to assist the Court. We thankfully acknowledge his assistance. The learned amicus curiae submitted that the provisions contained in Chapter III of the Act do not provide or contemplate postponement of "Tillers' Day" even in case of a minor landlord. According to him what is postponed is merely the formality of obtaining ownership by the tenant on payment of purchase price in accordance with provisions contained in Section 32(3) and 32F of the Act.

After hearing the learned counsel for the parties, we have looked into the record of this case and also examined the relevant provisions contained in Chapter III of the Act. We have also gone through the decisions cited at the Bar. We have come to the conclusion that the main legal contention advanced as to the postponement or otherwise of the "Tillers' Day" under Section 32 in case of a minor landlord is not required to be decided by us. The three decisions of this Court cited before us do not directly cover the point because those were not the cases on statutory effect of Section 32 on "Tillers' Day" in a case where the landlord is a minor.

In our considered opinion, the landlord deserves to succeed in this appeal on the alternative grounds. There is clear concurrent finding of the Authorities under the Act that the lands involved were given for sugarcane cultivation and to leases of such lands, by virtue of provisions contained in Section 43A, the provisions mentioned in the said section including in Section 32 are not applicable. The relevant provision reads:

"43A. Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers. \026 (1) The provision of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65 shall not apply to \026

(a) land leased to or held by any industrial or commercial undertaking (other than a Co-operative Society) which in the opinion of the State Government bona fide carried on any industrial or commercial operations and which is approved by the State Government;

(b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(c) to lands held or leased by such co-operative societies as are approved, in the prescribed manner, by the State

Government which have for their objects the improvement of the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture and allied pursuits."

[Underlining to add emphasis]

We have also mentioned above that the landlord had instituted proceedings under Section 88C of the Act seeking certificate of exemption of the lands from operation of the provisions contained in Section 32 to 32R of the Act as the lands were 'economic holdings' within the definition of the Act having annual income not exceeding Rs. 1500/-. On the said application under Section 88C of the Act, a certificate was issued in favour of the landlord. The proceedings declaring the lands to have been granted for sugarcane cultivation under Section 43A and the certificate granted under Section 88C of the Act clearly took out the lands in question from the purview of provisions of Section 32 to 32R of the Act. The above orders in favour of the landlord under Section 43A and 88C were taken up by the tenant to the Maharashtra Revenue Tribunal and they have attained finality in favour of the landlord. Those orders were not separately challenged by the tenant in further proceedings before the High Court. Since the above orders under Section 43A and Section 88C have become final and conclusive between the parties, the authorities under the Act rightly held that proceedings under Section 32G, to enable the tenant to purchase the land as 'deemed purchaser' under Section 32, were liable to be dropped. It has also come on record that during his minority the landlord, through his natural guardian, terminated the tenancy of the tenant on the ground of continuous defaults in payment of rent. He thereafter instituted proceedings under Section 29(2) of the Act and obtained possession of the lands. When the tenant tried to interfere with the possession of the landlord, a civil suit was filed in the Court of Second Civil Judge (Jr. Division), Kolhapur being Civil Suit No. 464 of 1971 and a decree of permanent injunction was obtained against the tenant by judgment dated 30th April 1974. A second suit being Civil Suit No. 1005 of 1977 was again filed by the landlord against the tenant and others for grant of a perpetual injunction against them not to cause interference and obstruction in the possession of the landlord over the lands. The second suit was decreed on 21.7.1986. These decrees of the Civil Court have also attained finality.

In the aforesaid circumstances, we do not consider it necessary to go into the purely academic question as to whether in case of a minor landlord, "Tillers' Day" under Section 32 of the Act gets postponed or not and whether such a minor landlord during his minority, after "Tillers' Day" can terminate the tenancy for default in payment of rent or not.

In our considered opinion, the High Court was clearly in error in observing that not all the lands have been found to have been leased for sugarcane cultivation. It also committed a serious error in overlooking the fact that all proceedings undertaken by the landlord for terminating tenancy, obtaining possession under Section 29, declaration under section 43A and exemption certificate under Section 88C of the Act had attained finality. The High Court, therefore, grossly erred in quashing all orders of the authorities under the Act and remanding the matter to the original authority for proceeding afresh under Section 32G of the Act.

As a result of the discussion aforesaid, the appeal is allowed. The impugned order of the High Court dated 17th November 1997 is hereby set aside and the orders of the authorities below under the Act are restored. The

respondents are unrepresented and, therefore, we leave the parties to bear their own costs.

JUDIS