

CASE NO.:
Appeal (civil) 2337-2338 of 2000

PETITIONER:
Babu Vithu Gaikwad [Dead] by LRs

RESPONDENT:
Chintaman Sadashiv & Ors

DATE OF JUDGMENT: 16/05/2007

BENCH:
A.K. Mathur & Tarun Chatterjee

JUDGMENT:
J U D G M E N T

TARUN CHATTERJEE, J.

1. These appeals are preferred against the final order 1st October, 1997 and order dated 15th September, 1999 passed in C.A.No.8320 of 1997 by a learned Single Judge of the High Court of Judicature at Bombay in Writ Petition No.139 of 1984. By the order dated 1st October 1997, the learned Single Judge of the High Court dismissed the aforesaid writ petition in which the appellants prayed for quashing a judgment and order of Maharashtra Revenue Tribunal [in short MRT] dated 30th August, 1983 in Revision Application No. MRT P 14 of 1981 by which the Tribunal had confirmed the order passed by the Tehsildar in Tenancy Case No.32 FG/54/78 dated 31st August, 1978. In the application under Article 227 of the Constitution, a prayer was also made by the appellants to restore the order passed by the Appellate Court in Tenancy Appeal No.56 of 1979 dated 27th October, 1980.

2. The facts leading to the filing of these appeals in short may be stated as follows:

3. Agriculture land (for short "the aforesaid land") bearing Survey No.175/1 admeasuring 2 acres and 11 gunthas situated at Village Biwadi, Tal Purandhar, District Pune was owned by Sadashiv Purandhare, father of the respondent No.1 Chintaman Sadashiv. Babu Vithu Gaikwad whose heirs and legal representatives are the appellants in this Court was the original tenant in respect of the aforesaid land. A partition of the aforesaid land was affected by the deceased father of the respondents by which the disputed land was allotted to him. On the tillers day, i.e., 1st April, 1957 the respondent No.1 was a minor. He attained majority on 6th October, 1960. In compliance with Section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the 'Act'), the respondent No.1 issued notice to Babu Vithu Gaikwad [since deceased] for termination of his tenancy in respect of the aforesaid land. This termination notice was issued within one year of attaining the age of majority. The landlord-respondent No.1 had failed to take out proceedings under Section 29 of the Act until he filed an application on 27th March, 1962. Since the application under Section 29 of the Act was time barred, the proceedings taken out by the landlord-respondent No.1 were withdrawn on 5th September, 1964. After one year of such withdrawal, Babu Vithu Gaikwad -the tenant- had filed an application under Section 32F read with Section 32G of the Act on

2nd August, 1965. In these proceedings, on 6th October, 1967, a statement of the tenant was recorded that he was willing to purchase the disputed land. The additional Tehsildar rejected the application of the tenant by his order dated 28th January, 1973. The tenant filed an appeal before the Sub Divisional Officer which was allowed and the matter was remitted back to the Additional Tehsildar for fresh disposal. After a month by his order dated 31st August, 1978, the Additional Tehsildar held that under Section 32F the right of the tenant to purchase the aforesaid land was forfeited and, hence, directed that proceedings could be initiated under Section 32P of the Act. Aggrieved by this order, the tenant preferred an appeal before the Additional Collector, Pune and by an order dated 27th October, 1980 he allowed the appeal and remanded the matter back to Additional Tehsildar for holding an enquiry under Section 32G to 32R of the Act for fixing the price for purchase in accordance with law. Being aggrieved, the landlord-respondent No.1 filed a revision petition before the MRT, Pune which was allowed by the tribunal by an order dated 30th August, 1983 and against this order the tenants had filed a writ petition in the High Court of judicature at Bombay, which was dismissed by the impugned order in respect of which special leave petition was filed and leave was granted.

4. We have heard the learned counsel for the parties and examined all the orders mentioned above and the materials on record. Before considering whether the High Court was justified in confirming the order of the tribunal, it would be appropriate to refer to some of the relevant provisions of the Act which would be required for consideration in order to dispose of the appeals.

"29. Procedure of taking possession:- (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for possession to the Mamlatdar. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land or the dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be.

(2) Save as otherwise provided in sub-section (3A), no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or the dwelling house, as the case may be, is deemed to have accrued to him.

(3) On receipt of application under sub-section (1) or (2) the Mamlatdar after holding an enquiry, pass such orders thereon as he deems fit:

Provided that where an application under sub-section (2) is made by a landlord in pursuance of the right conferred on him under section 31, the Mamlatdar shall first decide, as preliminary issues, whether the conditions specified in clause (c) and (d) of Section 31A and sub-section (2) and (3) of Section 31B are satisfied. If the Mamlatdar finds that any of the said conditions is not satisfied, he shall reject the application forthwith.

(3A) Where a landlord proceeds for termination of the tenancy under sub-section (1) of Section 43-1B, then, notwithstanding anything contained in this Act, the

application for possession shall be made to the Collector, who shall after holding an enquiry in the prescribed manner, pass such orders thereon as he deems fit.

(4) Any person taking possession of any land or dwelling house except in accordance with the provisions of sub-section (1), (2) or as the case may be, (3A), shall be liable for forfeiture of crops, if any, grown in the land in addition to payment of costs as may be directed by the Mamlatdar or by the Collector and also to the penalty prescribed in section 81."

"31. Landlord's right to terminate tenancy for personal cultivation and nonagricultural purposes.- (1) notwithstanding anything contained in section 14 and 30 but subject to sections 31A to 31D (both inclusive), a landlord (not being a landlord within the meaning of Chapter III-AA) may, after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona fide requires the land for any of the following purposes:-

- i) cultivating personally, or
- ii) for non-agricultural purposes.

(2) The notice required to be given under sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession under Section 29 shall be made to the Mamlatdar on or before 31st day of March 1957.

(3) Where landlord is a minor, or a widow, or a person subject to mental or physical disabilities then such notice may be given and an application for possession under section 29 may be made,

- i) by the minor within one year from which he attains majority;
- ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;
- iii) within one year from the date on which mental or physical disability ceases to exist; and

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 the Mamlatdar on enquiry is satisfied that the share of such person in the land is separated, having regards to the area, assessment, classification and value of land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion."

"32F. Right of tenant to purchase where landlord is minor, etc.- (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 under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 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 under section 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 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 the Mamlatdar on enquiry is satisfied that the share of such person in the land is separated, having regards to the area, assessment, classification and value of land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

b) Where the tenant is a minor, or a widow or a person subject to any mental or physical disability or serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised-

i) by the minor within one year from which he attains majority;

ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

iii) within one year from the date on which mental or physical disability ceases to exist; and

iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces:

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 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 the Mamlatdar on enquiry is satisfied that the share of such person in the land is separated, having regards to the area, assessment, classification and value of land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

(1A) 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 Land 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 32E (both inclusive) and section 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase."

5. At this stage, we may also note that the order of the High Court dated 1st October, 1997 was sought to be reviewed by the appellants which by the order dated 15th September 1999 was also rejected. We may mention here that since the appellants have challenged the final order along with the order passed in the review petition it would not be necessary for us to deal with the question whether the High Court was justified in rejecting the review application. Let us, therefore, confine ourselves to the order of the High Court by which the petition under Article 227 of the Constitution was rejected.

6. On behalf of the appellants it was submitted that the tenant had shown his willingness to purchase the aforesaid land in the proceedings before the trial authority under Section 32G of the Act. According to the learned counsel for the appellants the tribunal as well as the Tehsildar have misconstrued the provisions of Section 32 and 32F of the Act and therefore the order passed by the High Court and the Maharashtra Revenue Tribunal deserve to be set aside and the order passed in Appeal No. 56 of 1979 dated 27th October 1980 must be restored.

7. Before the Additional Tehsildar, the question that was raised by the parties was about the partition affected between them. The Tehsildar held that the tenant had in no uncertain terms accepted Chintaman Sadashiv Purandhare as his landlord and paid rent to him and received rent receipts from him and this conduct on the part of the tenant must be construed to be a waiver. The Tehsildar also held that after accepting Chintaman Sadashiv Purandhare as his landlord and paid rent to him and received rent receipts from him, it was not open to the tenant to say that Chintaman Sadashiv Purandhare was not his landlord. On the above findings, the Tehsildar held that the partition was valid and genuine and Chintaman Sadashiv Purandhare was the landlord of the aforesaid land.

8. After deciding the question of partition, the Tehsildar went on to decide whether the tenant had complied with the provisions regarding giving intimation within the period specified in Section 32G of the Act. After considering the fact, that the landlord was a minor on the tillers day, i.e., on 1st April, 1957 and, therefore, the tenant could not become entitled to purchase the aforesaid land as contemplated in Section 32F of the Act. The Tehsildar also found from the record that the landlord had attained majority on 6th October, 1960 and it was incumbent on the part of the tenant to give intimation of purchase of the aforesaid land by 6th October, 1962, in view of Section 32F of the Act. According to the Tehsildar, the tenant had failed to comply with the mandatory requirement as enjoined by Section 32F of the Act. Accordingly, the application was rejected by the Tehsildar, inter alia, on the findings that the partition was valid and genuine and the tenant had forfeited the right of purchase conferred on him by Section 32F of the Act and therefore directed that the purchase by the tenant became ineffective. In appeal the order of the Tehsildar was set aside and appeal filed against the said order was allowed and the case was sent back to the Tehsildar for conducting an enquiry under Section 32G for fixing the purchase price in

accordance with law.

9. Feeling aggrieved and dissatisfied with the order of the Appellate Authority, a revision was filed at the instance of the present respondent which came to be registered as Revision Application No. MRT-PIL 4/1981. However, the Revisional Authority agreed with the findings of the Tehsildar to the extent that the tenant had failed to exercise his right to purchase the land as he did not give intimation as required under Section 32F (1)-A of the Act. So far as the question of intimation as required under Section 32G of the Act is concerned, the Revisional Authority found that two things were necessary in order to show that the statement of the tenant recorded in the proceedings under Section 32G of the Act amounted to an intimation. Accordingly, it was held that there should be a statement of the tenant recorded in the proceedings under Section 32G of the Act and such statement must be recorded in the presence of the landlord. However, the Revisional Authority found that the aforesaid two ingredients were absent in the present case and, accordingly, provisions of Section 32F of the Act regarding intimation to be given by the tenant were not complied with. On the aforesaid findings, the Revisional Authority came to the conclusion of fact that the tenant had failed to exercise his right to purchase the land and, therefore, the trial court, namely, the Tehsildar was perfectly justified in holding that the proceedings under Section 32P of the Act should be started. The revision application was thus allowed and the order passed by the Appellate Authority was set aside and that of the Tehsildar was restored.

10. Feeling aggrieved by this order of the Revisional Authority, the appellants filed a writ petition before the High Court which came to be registered as Writ Petition No.139 of 1984 and by the impugned order the High Court dismissed the writ petition and held that there was no error of jurisdiction nor was there any error apparent on the face of the record and accordingly the order passed by the Tehsildar and affirmed by the MRT was perfectly valid and did not warrant any interference. Feeling aggrieved by this order of the High Court, the appellants preferred special leave petition in this court.

11. Before us, the following questions were raised for our discussion by the Learned Counsel for the parties. The questions raised before us for being decided may be listed as:

1. Whether the provisions of Section 32F(1A) of Bombay Tenancy and Agricultural Land Act, 1948 become inapplicable when a landlord applies for recovery of possession under section 29 r/w Section 31 of the said Act?

2. Whether Section 29 read with Section 31 and Section 32F of the Act are mutually exclusive?

12. Since the aforesaid two questions are interrelated, let us discuss the two issues together. As noted hereinabove, Section 29 deals with the procedure involved in taking possession by a landlord, Section 31 talks about landlord's right to terminate tenancy for personal cultivation and nonagricultural purposes while Section 32F pertains to right of tenant to purchase where landlord is minor.

13. Section 29 and 31 if read together deal with the process involved in a situation where the landlord wants to take possession of his land from the tenant and his right to terminate the tenancy for personal use. Section 32F on the contrary speaks about the right of the tenant to purchase the land in case the landlord is a minor.

Both the parts contradict each other in the sense that if the landlord gets to exercise his right, the tenant cannot and vice versa. Thus, in our view, it is only logical to conclude that when a landlord applies for recovery of possession under section 29 read with Section 31 of the Bombay Tenancy and Agricultural Land Act, 1948, the provision of Section 32F(1A) of said Act become inapplicable, thereby making them mutually exclusive to the extent that if one is applicable, the other could not be evoked. That apart, it must be borne in mind that an error on the part of the landlord does not mean that the tenants' rights under Section 32F are evoked automatically.

14. However, considering the present case, it is important to note that the Tribunal was of the view that the tenants had not brought anything on record that showed that they had filed any application in accordance with section 32F in order to purchase the aforesaid land. It stated that the Appellate Authority had held them to be deemed purchasers even though the intimations that were put by the tenants were not in accordance with law. It is important to mention here that Section 32G speaks about the power of the Tribunal to issue notice and determine price of land to be paid by the tenants. The tenants under this section have to show willingness to purchase the land after which the Tribunal is duty bound to give opportunity to the landlord and any other concerned party to be heard before deciding the value of the land. In the present case, the Tribunal was of the view that the second limb of the condition had not been satisfied, i.e., the landlord's statements were not brought on record. This was the inconsistency in the process. Considering this, we too are of the view that since the intimation was inconsistent with law, the Appellate Authority erred in holding the tenants as deemed purchasers. We, thereby, uphold the decision given by the Tribunal and the Single Judge Bench of the High Court of Bombay on this aspect.

15. Before we part with this judgment we find it appropriate to discuss the cases mentioned in the application which were not looked into by the High Court. The first case is that of Harshavardhan Shrinivas Potnis v. Mahadu Pundalik Gangurde (AIR 1980 Bombay 198). In that case, the disputed property belonged to one Girijabai, who was admittedly a widow and had not exercised her right of resumption under Section 31 of the Act till her death. Girijabai died on 4th June, 1965. By a will executed by her, she bequeathed the two fields in question in favour of the petitioner who was then minor having been born on 13th June, 1956. He attained majority on 13th June, 1976.

16. The High Court observed that the minor who succeeded to the interest of a widow after 31st December 1956 was not a person who was a landlord either on 31st December 1956 and he cannot take advantage of the extension of the period provided for a minor who was a landlord on 31st December, 1958. The period during which the minor after having succeeded to the widow could have terminated the tenancy of the tenant under Section 31 (3) was one year from the time of her death. The intimation required to be given under Section 32F (1A) by the tenant in order to exercise his right of purchase should have been given within one year from the expiry of the period of one year referred to in Section 31 (3). Thus the period in the instant case, during which the tenant should have served an intimation, was within two years from the death of the widow. This case is however distinguishable from the one at hand as this case deals with succession in case of death of a widow whereas the one before us is specific to the rights of a minor as becoming the landlord of the disputed property on attaining the age of majority.

17. The case of Amrit Bhikaji Kale and Ors. v. Kashinath Janardhan Trade and Anr. [AIR 1983 SC 643] is also distinguishable from the one before us. In that case, the disputed property belonged to Tarachand Chopra. Janardhan, the father of the respondent was admittedly the tenant of this land on 1st April, 1957. Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 as amended from time to time provided that on the 1st April, 1957 styled as the tillers' day every tenant shall subject to other provisions of the section and the provisions of the next succeeding sections be deemed to have purchased from his landlord, free from all encumbrances subsisting thereon on the same date the land held by him as a tenant if other conditions of the section are satisfied. Thus by operation of law, Janardhan, who was the tenant of the land on the tillers' day became the deemed purchaser thereof. Landlord Tarachand died on August 12, 1959. Before his death, landlord Tarachand had executed a will and bequeathed the suit land to Ashoklal Gugale who got his name mutated in the revenue record in respect of the suit land in his favour as owner. However, on the date of mutation, Ashoklal was a minor.

18. The said Janardhan applied to the Tribunal for purchase of the land and fixation of price of the same. The Tribunal went into the records and held that Tarachand was the recorded landlord and being under no disability and Janardhan being tenant of the land, by operation of law, became deemed purchaser and all subsequent proceedings were null, void and nonest. The Tribunal accordingly determined the purchase price. The High Court upheld the said decision.

19. The Supreme Court after going through the records was of the following opinion:

"Janardhan was deprived of his possession by an order which had no legal sanction. He was deprived of possession on the footing that he was a tenant ignoring and overlooking the statutory event that he had become the owner. Even when the Legislature passed such a revolutionary measure its knowledge was not transmitted to the persons for whose benefit the measure was enacted and there was no awakening to one's right."

20. On examining the above mentioned case, we are of the opinion that the case of Amrit Bhikaji Kale pertains to determination of the question whether Janardhan was a deemed purchaser or not. However, in the case before us, the rights of the minor are not disputed. The question of the tenants becoming a deemed purchaser does not arise in the present case as the land was transferred in the name of the minor before the tiller's day.

21. As per our discussions above, we, therefore, hold that when a landlord applies for recovery of possession under Section 29 read with Section 31 of the Bombay Tenancy and Agricultural Land Act, 1948, the provision of Section 32F(1A) of said Act become inapplicable, thereby making them mutually exclusive to the extent that if one is applicable, the other could not be evoked.

22. For the reasons aforesaid, the answers to the question raised as noted herein earlier are in the negative. Therefore, we dismiss the appeal upholding the decision of the High Court of Bombay and the MRT, with no orders as to costs.