

PETITIONER:
JANBA (DEAD) THROUGH LRS

Vs.

RESPONDENT:
SMT. GOPIKABAI

DATE OF JUDGMENT: 06/04/2000

BENCH:
S.S.Ahmad, M.B.Shah

JUDGMENT:

Shah, J.

The question involved in this appeal is with regard to the interpretation of Section 50(1) of Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act) which inter alia provides that where tenancy is created after 01.4.1963, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase during one year from the commencement of the tenancy so much of such land as he may be entitled to purchase under Section 41 and the provisions of Sections 41 to 44 shall mutatis-mutandis apply to such purchase. For this purpose, as provided under Section 43 he is required to make an offer to the landlord stating the price at which he is ready to purchase the land and such price shall not exceed 12 times the rent payable by him. It is the contention of the appellant-tenant that as the respondents-landladies were widows, his right to purchase the land is postponed under Section 41(2) of the Tenancy Act till their disability ceases. As against this, the High Court of Bombay by impugned judgment dated 05.7.1985 in Special Civil Application No.792/1975 held that Section 41(2) would not be applicable in case of purchase specified under Section 50. That judgment and order is challenged by filing this appeal.

Before dealing with the contentions raised by the learned counsel for the appellant it is to be stated that during the proceedings, respondent No.1, Smt. Radhikabai widow of Laxmanrao Wanjari had expired. Civil Misc. Petition No.19711 of 1986 was filed for deletion of her name stating that Radhikabai had expired leaving behind no person as her legal heir. Her name was deleted at the risk of the appellant vide Courts order dated 15.3.1999 made in the said CMP.

For deciding the question involved, we would first mention a few facts of the case. On 16.1.1967 respondents who were widows of one Laxmanrao Wanjari applied to the Tehsildar, Kelapur for a declaration that the appellant

herein was not a tenant of the land bearing Survey Nos.1/1, 2 acres 28 gunthas and 3/1A, 6 acres 39 gunthas of village Hirapur and his possession of the land was illegal and in the alternative for possession under Section 50 of the Tenancy Act as the tenant had not exercised his right of purchase within one year from the commencement of the said provision. The appellant contended that the respondents being widows, his right to purchase stood postponed for two years after the cessation of interest of the respondents in view of Section 41(2) of the Tenancy Act. The matter was considered by various authorities and ultimately reached the High Court in Special Civil Application NO.505 of 1969. The High Court remanded the matter to the Tehsildar for fresh decision. After remand the Tehsildar vide order dated 22.2.1972 held that the appellant was tenant since 1964-65 and that he was not entitled to purchase the said land till after the expiry of two years from the cessation of interest of the widow, hence the application was rejected. In appeal, the Appellate Authority vide its order dated 31.12.1973 held that the appellant had never been a tenant and directed the respondents to seek appropriate remedy for restoration of possession. The Tribunal by order dated 31.12.1974 allowed the revision by restoring the order passed by the Tehsildar and holding that the respondents being widows, the question of extension of time and deemed surrender did not arise at all. The Tribunal further held that since the respondents had not preferred application within six months of the accrual of the cause of action, the application was time barred. Against the said order, Special Civil Application NO.792 of 1975 was filed before the High Court. In the High Court, it was the contention of the appellant that Section 41(2) would be applicable in respect of tenancies to which Section 50 of the Tenancy Act applied. Hence, as the landladies were widows, the right to purchase would stand postponed for two years after the cessation of interest of the widows. On the other hand, counsel for the respondents submitted that Section 50 of the Act was a complete Code in itself and the provisions of section 41(2) regarding postponement of the right to purchase would not apply. The learned Single Judge of the High Court held that the claim for declaration that the appellant was not a tenant was barred by limitation and decided the matter by holding that the tenancy was created after 1.4.1963. The learned Single Judge also held that in the facts of the case, Section 50 would be applicable. On the question whether section 41(2) of the Act applied to such tenancies, the learned Judge referred the matter to the Division Bench of the High Court. The Division Bench by the impugned order dated 5.7.1985 held that Section 50 is a complete Code in itself and that the provisions of Section 41(2) would not be applicable to such tenancies. The Court held that the right to purchase having not been exercised by the appellant within one year from the date of tenancy, the respondents were entitled to delivery of possession.

For proper understanding of scheme of Section 50 and its interpretation, it is necessary to refer to relevant parts of Sections 41, 42, 43, 46, 49A and 50 of the Tenancy Act.

Section 41. Right of tenant to purchase land. (1) Notwithstanding anything to the contrary in any law, usage or contract but subject to the provisions of Section 42 to 44 (both inclusive) a tenant other than an occupancy tenant shall, in the case of land held by him as a tenant, be

entitled to purchase from the landlord the land held by him as a tenant and cultivated by him personally.

(2) Where the landlord is of the following category, namely: --

(a) a minor,

(b) a widow,

(c)

(d) a person subject to any physical or mental disability,

such tenant shall be entitled to purchase the landlords interest under this section after the expiry of two years from the date on which

(i) the landlord of category (a) attains majority, (ii) ... (iii) the landlord of category (d) ceases to be subject to such disability, and (iv) the interest of the landlord of category (b) in the land ceases to exist:

Section 42. Extent of land which tenant may purchase under section 41. The right of a tenant under section 41 to purchase from his landlord the land held by him as a tenant shall be subject to the following conditions, namely:--

(a) if the tenant does not hold any cultivate personally any land, as a tenure-holder the purchase of the land by him shall be limited to the extent of three family holdings;

(b) if the tenant holds any cultivates personally any land as a tenure-holder the purchase of the land by him shall be limited to such area as will be sufficient to make up the area of the land held by him as a tenure-holder to the extent of three family holdings.

Section 43 provides for the procedure for the tenant to make an offer, determination of purchase price, mode of payment, etc

Section 43(1) to (14)

Section 43(14-A)--If a tenant fails to exercise his right of purchase under Section 41 in respect of any land or the purchase of any land becomes ineffective, the land shall be deemed to have been surrendered to the landlord, and thereupon the provisions of sub-sections (1) and (2) of Section 21 and Chapter VII shall apply to such land as if the land was surrendered by the tenant under section 20.

Section 44 deals with the amount of purchase price to be applied towards the satisfaction of debts.

Section 46. Transfer of ownership of land to tenants from specified date. (1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary, with effect on and from the first day of April, 1961, the ownership of all lands held by tenants which they are entitled to purchase from their landlords under any of the provisions of this Chapter shall stand transferred to and

vest in, such tenants and from such date such tenants shall be deemed to be the full owners of such lands:

Provided that if on such date any such tenant is of the following category, namely;-

(a) a minor, (b) a widow, (c) a serving member of the armed forces, or (d) a person subject to any physical or mental disability,

the ownership of the land shall stand transferred

(i) to the tenant on the expiry of one year from the date on which the tenant of category (a) attains majority, the tenant of category (c) ceases to serve in such force, the tenant of category (d) ceases to be subject to such disability; and

(ii) in the case of a widow to her successor-in-title on the expiry of one year from the date on which the widows interest in the land ceases to exist:

Provided further that where in respect of any such land, any proceeding under section 19, 20, 21, 36 or 38 is pending on the date specified in sub-section (1) the transfer of ownership of such land shall take effect on the date on which such proceeding is finally decided and the tenant retains possession of the land in accordance with the decision in such proceeding.

Section 49(A). Ownership of certain lands to stand transferred to tenants on 1st day of April, 1963. (1) Notwithstanding anything contained in section 41 or 46, or any custom, usage, decree, contract or grant to the contrary but subject to the provisions of this section, on and from the 1st day of April, 1963 the ownership of all land held by a tenant (being land which is not transferred to the tenant under section 46 or which is not purchased by him under Section 41 or 50) shall stand transferred to and vest in such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land, if such lands is cultivated by him personally, and

(i) the landlord has not given notice of the termination of tenancy in accordance with the provisions of sub-section (1) of section 38 or section 39 or sub-section (2) of section 39A; or

(ii) the landlord has given such notice but has not made an application thereafter under section 36 for possession as required by those sections; or

(iii) the landlord (being a landlord not belonging to any of the categories specified in sub-section (2) of section 38 has not terminated the tenancy on any of the grounds specified in section 19; or has so terminated the tenancy but has not applied to the Tahsildar on or before the 31st day of March, 1963 under section 36 for possession of the land:

Provided that, where the landlord has made such application for possession then the tenant shall, on the date on which the application is finally decided be deemed to be the full owner of the land which he is entitled to retain in possession after such decision.

Section 50. Rights of tenants holding land under tenancy restored or created after specified date to purchase land. (1) Where a tenancy is restored under Sections 7, 10, 21, 52 or 128A or is created by a landlord not being a landlord within the meaning of Chapter III-A in any area after the date specified in sub-section (1) of section 49A, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase under section 41 and the provisions of section 41 to 44 (both inclusive) shall mutatis mutandis apply to such purchase.

At this stage we would mention that Section 50 of the Tenancy Act as applicable to Vidarbha region is consistently interpreted by the High Court since years as stated in the impugned judgment. The learned Single of the Bombay High Court in *Govinda v. Udhaio and Others* [1972 Mh.L.J. 588] considered the scheme of Sections 41 to 50 and pointed out that Section 50 as it stood prior to its amendment as enacted in December 1958 was as under: - 50. Right of tenant holding land under tenancy created after specified date to purchase land: - In the case of a tenancy created in any area after the date specified in sub-section (1) of section 46, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase within one year from the commencement of the tenancy so much of such land as he may be entitled to purchase under section 41 and the provisions of sections 41 to 44 (both inclusive) shall mutatis mutandis apply to such purchase.

The Court observed that in its original form the tenancies which were covered by section 50 were those which were created after 1.4.1961 because that was the date on which there was a statutory transfer of ownership in favour of certain tenants who were entitled to purchase land under section 41 of the Tenancy Act. It may be stated that section 43 did not contain sub-section (14A) initially and the concept of a deemed surrender of land which is contained in Section 43(14A) did not become relevant prior to 12.2.1962 when sub-section (14A) was for the first time put on the Statute book by Act NO.2 of 1962. Section 50 was first amended by Maharashtra Act 5 of 1961 and sub-section (2) was added to that section. Section 50 was then again amended by Act No.2 of 1962 and it is as a result of this amendment that the section is in its present form, except a small part of it which is the result of an amendment by Maharashtra Act No.39 of 1964. The Court also considered the amendment in Section 50 and observed: -

The material amendment in this section was obviously the result of the enactment of section 49-A in the Tenancy Act by Maharashtra Act No. 2 of 1962. By enactment of section 49-A the legislature provided for a statutory transfer of ownership of all land held by a tenant being land which is not transferred to the tenant under section 46 or which was not purchased by him under section 41 or section 50 with effect from 1.4.1963, if such land was cultivated personally by the tenant and if certain conditions which are set out in section 49-A were satisfied. Section 49-A operated notwithstanding anything contained in Section 41 or 46, or any custom, usage, decree, contract or

grant to the contrary. Having provided for a statutory transfer of ownership with effect from 1.4.1963 in respect of lands held by a tenant on that day section 50 was made applicable in respect of tenancies created after 1.4.1963. Section 50 did not provide only for tenancies which were created after 1.4.1963 but it also dealt with tenancies which were restored either under section 7 or 10 or 52 or 28 or 128-A of the Tenancy Act. This section provided that every tenant holding land under such tenancy, that is to say, a tenancy which was restored under any one of the sections referred to in that section, or under a tenancy created after 1.4.1963, by a landlord not being a landlord within the meaning of Chapter III-A of the Tenancy Act, if he was cultivating the land held by him under such tenancy personally he shall be entitled to purchase that land within one year from the commencement or from the restoration of the tenancy as the case may be.

After considering the aforesaid scheme with regard to Section 50, the Court held that: - Section 50 refers to section 41 twice. The first reference has been made in order to indicate the extent of the land which the tenant is entitled to purchase under section 50 of the Tenancy Act. The material words of the section minus all the adjectival clauses would be every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase so much of such land as he may be entitled to purchase under section 41. The words such land refers to the land which he holds under tenancy and which he cultivates personally. When it is to be decided whether the tenant is entitled to purchase the entire land which he holds under tenancy and which he cultivates personally, the reference to section 41 becomes material. The section says that the tenant is entitled to purchase only so much land as he may be entitled to purchase under section 41. Section 41 deals with the right of a tenant to purchase land and this right is subject to the provisions of section 42 in which the extent of the land which the tenant may purchase under section 41 is set out. The words which the tenant may be entitled to purchase under section 41 has obvious reference to the restriction in section 42. The reference to section 41 is for a specific purpose, namely, to find out the extent of land which the tenant is entitled to purchase.

Thereafter the Court referred to Section 42 and relevant part of Section 43, particularly, (14-A) and observed:-

This sub-section set out the consequences of the tenant failing to exercise the right of purchase under section 41, which, in view of the provisions of section 50, must also follow where a tenant fails to exercise his right of purchase under section 50 and it also provides for the consequences of the purchase of any land becoming ineffective. The consequences are that the land shall be deemed to have been surrendered to the landlord and thereupon the provisions of sub-sections (1) and (2) of section 21 shall apply to such land as if the land was surrendered by the tenant under section 20. The consequence which is set out in this section is that the land is deemed to have been surrendered to the landlord and after such surrender an enquiry is required to be made having regard to the provisions of section 21(1) and (2) about the extent of

the land which the landlord is entitled to retain with him.

The Court finally held that the consequences contemplated by section 43(14-A) of the Tenancy Act would arise only if the tenant fails to exercise his right to purchase within one year.

The aforesaid judgment was again referred for re-consideration by Division Bench in Vikram Yeshwanta and Others v. Eknath Trimbak Gadekar and Others [1977 Mh.L.J. 520]. The Division Bench held that they were in agreement with the view taken by the learned Single Judge in the aforesaid case. The Division Bench reiterated that on a proper reading of sections 50 and 43(14-A) of the Tenancy Act, the right to obtain possession will be deemed to have accrued to the landlord as soon as there is failure on the part of the tenant to purchase the land within one year as contemplated by section 20. The aforesaid judgments are followed in the impugned judgment and order passed by the Division Bench. Section 50 of the Tenancy Act has been interpreted in the manner stated above by the High Court consistently and it would not be proper to disturb the course of decisions by interpreting that provision differently after about three decades. This Court in Raj Narain Pandey and Others v. Sant Prasad Tewari and Others [(1973) 2 SCC 35] held that in the matter of local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. The Court further observed: -

A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation. As observed by Lord Evershed M.R. in the case of Brownsea Haven Properties v. Poole Corpn., [1958 Ch 574 (CA) : (1958 1 All ER 205)], there is well-established authority for the view that a decision of long-standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision.

The aforesaid observations are referred to and relied upon in Darshan Singh etc. v. Ram Pal Singh and Another etc. [(1992) Suppl. 1 SCC 191, para 33].

Further, considering the reasons recorded in Govinds case (supra), we do not think that the impugned order calls for any interference. Section 50, as quoted above, in terms provides that (i) in case where tenancy is restored or is created by a landlord not being a landlord within the meaning of Chapter III-A i.e. landlords who are or have been members of the armed forces, tenant would be entitled to purchase within one year from the commencement or restoration of the tenancy; (ii) the tenant would be entitled to purchase so much of such land as he is entitled to purchase under Section 41 and (iii) to such purchase the provisions of Sections 41 to 44 shall mutatis mutandis apply. Therefore, it is apparent that the scheme of Section 50 is different from Section 41. Section 41 talks of purchase of the land by a tenant and carves out an exception as provided in sub-section (2) in favour of landlord of specified categories (minor, widow or person subject to

physical disability). As against this, under Section 50 no such exception is carved out in favour of landlord or tenant who is a minor, a widow or a person subject to any physical or mental disability. Prescribed time limit for exercise of such option to purchase the land is only one year. No provision is made for postponing such right to purchase, if landlord or tenant is minor, widow or disabled person. Section 42 provides the extent of land which the tenant may purchase under Section 41 and limit is prescribed on the basis of three family holdings. Family holding is defined under Section 2 (13) to mean a family holding determined under Section 4 in respect of land situated in that local area. Section 43 provides the procedure for making an offer, determination of purchase price and its payment and consequences of non-payment. Section 44 makes provision that in case there are encumbrances lawfully subsisting on the land, the purchase price is to be applied towards the satisfaction of the encumbrances and the procedure for that purpose.

As against this, Section 46 provides for deemed purchase of the lands held by the tenants with effect from 01.4.1961. A specific provision is made in case where the tenant is a minor, a widow, a serving member of armed forces or a person subject to any physical disability, the ownership of the land stands transferred after the period specified therein. However, similar benefit is not given in favour of landlord of such category. Thereafter, the legislature inserted Section 49 (A) by Maharashtra Act 2 of 1961 providing that notwithstanding anything contained in Sections 41 and 46 from 01.4.1963 the ownership of land held by a tenant, which is not transferred to the tenant under Section 46 or which is not purchased by him under Section 41 or Section 50, shall stand transferred to and vest in such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land, if such land is cultivated by him personally. This purchase is subject to a rider as stated in the proviso that where a landlord has made an application for possession under Section 38 or 39, then such purchase shall be, on the date on which application is finally decided, of the land which he is entitled to retain possession after such decision. In context of aforesaid sections, it is apparent that scheme of Section 50 is to see that either the tenant purchases the land or restores back the possession of the land to the landlord. It provides that in case where tenancy is created or restored after 01.4.1963, the tenant is entitled to purchase the land cultivated by him to the extent mentioned in Section 42 within one year from the date of commencement of the tenancy. If there is failure to exercise such right, consequences provided in Section 43 (14A) would follow.

Mr. Uday U. Lalit, learned counsel for the appellants submitted that Section 50 specifically provides that provisions of Sections 41 to 44 would mutatis mutandis apply and, therefore, sub-section (2) of Section 41 would automatically apply and the right of the tenant to purchase the land is postponed till period prescribed therein is over.

This submission, in our view, cannot be accepted firstly because Section 50 only provides that tenant would be entitled to purchase so much of such land as he may be entitled to purchase under Section 41 and to such purchase the provisions of Sections 41 to 44 would mutatis mutandis

apply. The concept of mutatis mutandis as understood in context of Section 50 would be Sections 41 to 44 would be applicable with necessary changes in the points of detail to such purchase, that is to say, where a tenant has exercised his right to purchase the land he can purchase it to the extent permissible under Section 42. Thereafter, those parts of Sections which are pertaining to such purchase are made applicable but there is no question of postponing such purchase as provided under Section 41(2). Sub-section (2) can not be made applicable in case of purchase under Section 50, as it does not pertain to the purchase but it is with regard to postponement of such purchase. This is consistent with other provisions, namely, sections 46 and 49(A). Under Section 46 deemed purchase is provided from 01.4.1961 except in those cases where tenant was a minor, a widow, a serving member of armed forces or a person subject to any physical or mental disability and in those cases deemed purchase was postponed till the disability ceased as mentioned therein. No exception is carved out in favour of landlord who is a minor, widow or disabled person. Finally Section 49(A) was added which inter alia provides that notwithstanding anything contained in Section 41 or 46 ownership of land held by a tenant being land which is not transferred to the tenant under Section 46 or which is not purchased by him under Sections 41 or 50 shall stand transferred to and vest in such tenant and from that date he shall be the full owner of such land, if such land is cultivated by him personally. Exception is carved out in favour of the landlord belonging to any of the categories specified in sub-section (2) of Section 38 i.e. in favour of a minor, a widow or a person subject to any physical or mental disability. No such exception is carved out under Section 50. Secondly, section 50 specifically provides that every tenant holding land under such tenancy i.e. tenancy created or restored after 01.4.1963, and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase under Section 41. That period of one year cannot be changed by holding that sub-section (2) would be applicable and such purchase is to be postponed for an indefinite period i.e. after two years from the date of cessation of disability of the landlord. If this contention is accepted, such purchase would be postponed for a period of two years after happening of uncertain eventuality, namely, minor landlord becoming major, widow ceasing to be owner or in case of disabled person, till cessation of mental or physical disability. That is neither the intention of the legislature nor it is provided. What is provided for is to such purchase Sections 41 to 44 mutatis mutandis shall apply.

In the result, in our view, the reasons recorded by the High Court do not call for any interference and therefore, the appeal requires to be dismissed. The Civil Appeal is, accordingly, dismissed with no order as to costs.