

CASE NO.:
Appeal (civil) 3128 of 2000

PETITIONER:
Sudam Ganpat Kutwal P.A. Holder of Shankar Sitaram Bhosle

RESPONDENT:
Shevantabai Tukaram Gulumkar (dead) by LR Maruti Shankar Pachpute

DATE OF JUDGMENT: 18/08/2006

BENCH:
Arijit Pasayat & R. V. Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

This appeal by special leave is against the order dated 9.7.1999 passed by the Bombay High Court rejecting W.P. No.2599 of 1999 filed by the appellant. It is stated that 'Sudam Ganpat Kutwal' shown as appellant is the P.A. Holder of Shankar Sitaram Bhosle, that he had filed W.P. No.2599/1999 as the Attorney holder of Shankar Sitaram Bhosle, that he filed the SLP also as Attorney holder of Shankar Sitaram Bhosle, but that has not been stated in the cause title due to oversight, though he has specifically mentioned this fact in his rejoinder affidavit filed on 26.4.2000. In view of it, the appellant is permitted and directed to amend the cause title so as to describe him as P.A. Holder of Shankar Sitaram Bhosle. In view of it, the term appellant in this order would refer to Shankar Sitaram Bhosle.

2. The appellant's case in brief is as follows :

2.1) The appellant was inducted as the tenant of agricultural land bearing Gat No.332 in village Jogwadi, Taluk Baramati, District Pune, measuring 25 acres 9 Guntas, in the year 1954 and was cultivating the same personally.

2.2) Under section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 ('Act' for short), on the first day of April, 1956 (referred to as 'tillers day'), every tenant was deemed to have purchased the land held by him as tenant, from his landlord, free from all encumbrances subsisting thereon, on the conditions stated therein being fulfilled. The revenue records show that though the appellant was registered as the tenant of the said land on the tillers day, his right to purchase under the deemed purchase was postponed as the landlord was a widow.

2.3) The landlord (Anusuyabai Bhosle) filed an application (Tenancy Application No. 3/1958) under Section 31 read with Section 29 of the Act, seeking possession of the land in the occupation of the Appellant tenant on the ground that she required the land for her personal cultivation. The Tenancy Awal Karkun, Baramati, accepted the claim of the landlord and made an order dated 30.6.1960 directing that possession of half of the land should be delivered to the landlord for her bona fide personal cultivation and possession of the remaining half shall

remain with the tenant. In pursuance of it, the appellant delivered half of the land (the eastern portion) to Anusuyabai and continued in possession of the remaining half portion. It is alleged that Anusuyabai sold the land which she got for her personal cultivation, to others under different sale deeds.

2.4) Anusuyabai thereafter filed Tenancy Case No.95/1964 before the Mamlatdar, Baramati, seeking possession of the remaining half of the land on the ground that the appellant had committed certain defaults. The Mamlatdar rejected the said petition by the following order dated 9.2.1965 :

"The applicant has already taken possession of half of the suit land from the opponent tenant. She has now applied to obtain possession of remaining half land on the ground of defaults. The opponent has already paid the rent due to the applicant by money order. The opponent has produced the money order receipt in the matter. It is therefore clear that the opponent is not the intentional defaulter. I cannot therefore grant the request of the applicant to hand over the possession of the remaining half land. The request of the applicant is therefore refused. The application of the applicant is therefore dismissed. The parties should bear their own cost."

2.5) The landlord Anusuyabai died on 23.3.1975, and thereafter, the name of her sister Shevantabai was entered as her successor-in-title in the record of rights. The said Shevantabai filed Application No.72/1994 under Section 32P read with Section 32F of the Act on 19.1.1994 for a declaration that the deemed statutory purchase by the tenant be declared as void and ineffective, as the tenant had failed to fulfil the mandatory requirement of giving a notice of intimation of purchase within the time stipulated, under Section 32F (1A) of the Act.

3. The Agricultural Land Tribunal made an order dated 30.4.1994 accepting the contention of Shevantabai that the tenant had failed to issue a notice of purchase. The tenant was, therefore, directed to deliver possession to Shevantabai under Section 32P(2)(b) of the Act. Feeling aggrieved, the tenant filed an appeal under Section 74 of the Act before the Sub-Divisional Officer, Baramati Division, in Tenancy Case No.35/1994. The appellate authority by order dated 2.6.1995, set aside the order of the Tribunal and remitted the matter to the Tribunal, to hold a detailed inquiry into the matter with reference to the earlier proceedings.

4. The Land Tribunal held an inquiry and made an order dated 30.9.1995, reiterating its earlier finding that the tenant had failed to serve a notice of purchase within the stipulated time and, therefore, had lost the right to purchase the land. The appellant challenged the said order also in appeal (Tenancy Case No.27/1995) before the Sub-Divisional Officer, Baramati. Shevantabai and the Respondent herein who was representing her then, were the respondents in the said appeal.

5. During the pendency of the appeal, Shevantabai died on 15.4.1996. The said appeal was allowed, in part, by order dated 22.4.1996. The Appellate Authority upheld the order of the Tribunal to the extent that the tenant had failed to exercise his right by issuing a notice as required under Section 32F (1A) of the Act. It, however, set aside the direction to the appellant to deliver the land to Shevantabai, as that portion of the order was

passed without holding any enquiry as to landlord's right to terminate the tenancy. Consequently, the Land Tribunal was directed to hold a separate enquiry regarding the right of the landlord under section 31 read with Section 32F and then, if necessary, a separate enquiry under section 32P.

6. Both parties, that is the respondent herein (as legal heir of Sevantabai, claiming to be legatee under her will) as also the appellant, challenged the order dated 22/24.4.1996 passed by the Sub-Divisional Officer before the Maharashtra Revenue Tribunal by filing revision petitions. The Revenue Tribunal by its common order dated 4.1.1999 rejected the appellant's revision and allowed in part, the Respondent's revision. It held that after the death of Anusuyabai, the tenant had not exercised his right to purchase the land, by giving an intimation as required under section 32F(1A) within the stipulated time and therefore, his right to purchase became ineffective and the tenancy came to an end. It also set aside the direction of the SDO that a separate inquiry should be held regarding the right of landlord under Section 31 read with Section 32F, followed, if necessary, by a separate inquiry under Section 32P. A direction came to be issued for delivering possession of the disputed land to the Respondent under Section 32P.

7. The appellant challenged the order of the tribunal in W.P. No.2599/1999. Before the High Court, the appellant contended that the landlord (Anusuyabai) though a widow, had exercised her right of terminating the tenancy and seeking possession of the land; and that in pursuance of the order passed in such proceedings, he had delivered half of the land and therefore the question of the successor-in-title of Anusuyabai seeking possession of the balance land which remained with the tenant (under section 31 B(1) of the Act), did not arise. The Bombay High Court dismissed the said writ petition by order dated 9.7.1999 holding that the appellant had failed to prove from the records produced, that Anusuyabai had exercised the right to get back possession under section 31(1) of the Act or that the concerned authority had ordered delivery of half of the land to her. The said order is challenged by the tenant in this appeal by special leave.

8. The appellant contended that the High Court committed a serious error in holding that the records before it did not show half of the land was ordered to be delivered to the landlord Anusuyabai under section 31 (1) of the Act. He referred to the High Court record which contained a copy of the order dated 2.6.1995 of the SDO in Tenancy Case No.35/1994 as an annexure to the writ petition, wherein it is clearly stated thus :

"This mutation states that the landlady was widow and the right of tenants to purchase the suit property is postponed. However, later on there was proceedings under the Tenancy Act\005. The intimation of this Case No.3/1958 in Tenancy Case No.518/60 is present in lower court's papers. (Page 91) which shows that half of the suit land was ordered to be handed over to the landlady\005"

The appellant has also produced in this Court, a copy of the order dated 30.6.1960 in Tenancy Case No.3/1958 directing delivery of possession of half of the land to Anusuyabai. The learned counsel for the respondent did not dispute the fact that half of the land had in fact, been delivered by the tenant to Anusuyabai in pursuance of the order dated 30.6.1960. This is even referred to in the list of dates submitted on behalf of

respondent. Therefore, the facts that Anusuyabai had exercised her right to seek possession under Section 31(1), that the concerned Authority had made an order directing the tenant to deliver half the land to Anusuyabai for her personal cultivation and that Anusuyabai took possession of half the tenanted land, are not in dispute.

9. The dispute in this appeal relates to the question as to whether it was necessary for the tenant to issue a notice of intimation of purchase under Section 32F (1A) of the Act to the successor-in-title of Anusuyabai in regard to the half portion retained by him under section 31 B (1) read with section 31(1) of the Act and whether the failure to do so resulted in forfeiture of the tenant's right to the said land or right to purchase the said land under the Act.

10. Reference to relevant Sections of the Act will be useful to decide this question.

10.1) Section 29 deals with the procedure of taking possession. Sub-section (2) of section 29, as it stood at the relevant point of time (prior to commencement of Mah. Act 39 of 1964), provided that no landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar, and that for obtaining such order he shall make an application in the prescribed form within a period of two years from the date on which the right to obtain possession of the land, is deemed to have accrued to him.

10.2) Chapter III of the Act deals with the special rights and privileges of tenants and provisions for distribution of land for personal cultivation. Part I of the said Chapter (section 31 to 31 D) relates to termination of tenancy for personal cultivation and non-agricultural use. Part II (section 32 to 33) relates to purchase of land by tenants. Section 31 relates to landlord's right to terminate tenancy for personal cultivation. Sub-section (1) enables the landlord to terminate the tenancy of any land after giving notice and making an application for possession as provided in sub-section (2), if the landlord bona fide requires the land for cultivating it personally. Sub-section (2) stipulates that 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 31.12.1956 and a copy of such notice shall, at the same time, be sent to the Mamlatdar, and an application for possession under Section 29 shall be made to the Mamlatdar on or before the 31.3.1957. Sub-section (3) provides as follows :

"(3) Where a landlord is a minor or a widow, or a person subject to mental or physical disability, 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 the date on 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."

10.3) Section 31B provides that in no case a tenancy shall be terminated under Section 31 in such a manner as will result in leaving with a tenant, after termination, less than half the area of the land leased to him. Section 31C provides that the tenancy of any land left with the tenant after the termination of the tenancy under section 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation. Section 31D provides that if in consequence of the termination of tenancy under section 31, any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner in proportion to the area of the land left with the tenant.

10.4) Section 32(1) provides that on the first day of April, 1957 (tillers' day) every tenant shall, subject to the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if \026

"a) such tenant is a permanent tenant thereof and cultivates land personally;

b) such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of his tenancy under section 31; or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the land; or

(iii) the landlord has not terminated this tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to [the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the lands :"

The words 'subject to the provisions of the next succeeding sections' in Section 32(1) was amended as 'subject to other provisions of this section and the provisions of the next succeeding sections' and the following was inserted as sub-section (3), by Bom. Act 63 of 1958 :

"(3) In respect of the land deemed to have been purchased by a tenant under sub-section (1) ----

a) the tenant-purchaser shall be liable to pay to the former landlord compensation for the use and occupation of the land, a sum equal to the rent of such land every year, and

b) the former landlord shall continue to be liable to pay to the State Government the dues, if any, referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 10A, where the tenant-purchaser is not liable to pay such dues under sub-section (3) of that section until the amount of the purchase price payable by the tenant-purchaser to the former landlord is determined under section 32H.

10.5) Section 32F deals with the right of tenant to purchase where landlord is minor, or a widow, or a person subject to any mental or physical disability. Clause (a) of sub-section (1) of section 32F provides that notwithstanding anything contained in the preceding sections, where the landlord is a widow, 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. Sub-section (1A) of section 32F inserted by Bombay Act 38 of 1957, reads thus :

"(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 :"

Sub-section (2) of section 32F provides that the provisions of section 32 to 32F and 32G to 32R shall, so far as may be possible, apply to such purchase.

10.6) Section 32G requires the Tribunal to issue notice to the parties, as soon as may be, after the tillers' day, record the statement of the tenant, whether he is willing to purchase the land and then determine the price of the land to be paid by the tenant. Sub-section (5) provides that in the case of a tenant who is deemed to have purchased the land on the postponed date, the Tribunal shall, as soon as may be, after such date, determine the price of the land.

11. The position as disclosed by a combined and harmonious reading of Sections 31, 32, 32F and 32G may be stated thus :

a) Where the landlord has not served on the tenant, a notice of termination (as stated in clause (b) of sub-section (1) of section 32), the tenant is deemed to have purchased the land on the tillers day (1.4.1957);

b) Where the tenant is deemed to have purchased the land on the Tillers Day (1.4.1957), the Lands Tribunal is required to issue notice and determine the price of land to be paid by tenant. Where there is a deemed purchase, but the right to purchase is postponed, the Land Tribunal shall determine the price of land, as soon as may be after the postponed date.

c) A landlord had a right to give notice and make an application for possession after terminating the tenancy, if he wanted the land bona fide for personal cultivation, provided the notice was served on the tenant on or before 31.12.1956 (with copy to Mamlatdar) and application for possession under section 29 was filed on or before 31.3.1957.

d) A landlord widow is also entitled to make an application for possession under sub-section (1) of section 31 of the Act. Sub-section (3) of section 31 which is an enabling provision, extends the time within which the widow can seek possession under section 31(1) of the Act, beyond 31.12.1956. As a result, where the landlord is a widow, then the notice required under sub-section (1) of section 31 may be given and the application for possession under section 29 may be made by her so long as her interest in the land exists. Such notice can also be given by the successor-in-title of the widow within one year from the date on which the interest of the widow in the land ceases to exist.

e) Where the landlord is a widow (and she does not exercise her right under section 31(1) of the Act), the right to purchase under the deemed purchase is postponed till the expiry of the period during which such (disabled) landlord is entitled to terminate the tenancy under section 31 (3). The tenant desirous of exercising such right shall, however, given an intimation in that behalf to the landlord and the tribunal within one year thereafter, as required under section 32F (1A).

Consequently, where the landlord, being a widow as on 1.4.1957, does not choose to terminate the tenancy for personal cultivation, the tenancy continues during her lifetime and on the death of the widow, her successor-in-title will have the right to terminate the tenancy within one year from the date of death of the widow. 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 successor-in-title of the widow is given the right to terminate the tenancy under section 31 (3) by giving an intimation as required under section 32F(1A).

f) Where a landlord, who is a widow, exercises her right of termination and secures possession of part of the tenanted land for personal cultivation under section 31(1) of the Act, then there is no question of her successor-in-title giving a notice of termination within one year from the date on which the widow's interest ceases to exist. When section 31 (3) ceases to apply, section 32F also will not apply and there is no need for the tenant to give any intimation under section 32F(1A).

g) On an order for possession being made in favour of a widow-landlord in regard to land up to 50% of the tenanted land under section 31(1) read with section 31B(1), the widow will get possession of such land and the tenant continues in possession in regard to the remaining land. In regard to the land remaining with the tenant, rent has to be fixed under section 31D, until the purchase price is determined under section 32G(5) and is paid by the tenant purchaser.

12. If Anusuyabai, the widow landlord who died on 23.3.1975, had died without exercising her right under section 31(1) of the Act, and without taking back half the tenanted land, her successor-in-title could have exercised the right of termination for personal use by issuing a notice on or before 23.3.1976 [vide section 31(3) read with section 31(1)&(2) of the Act]; and the tenant - appellant would have had the right to purchase the tenanted land under section 32 till 23.3.1977, provided he gave an intimation to the landlord and the Tribunal on or before 23.3.1977 under section 32F(1) read with section 32F(1A) of the Act. But as Anusuyabai had exercised her right to take possession for personal cultivation, under section 31(1) of the Act, during her life time and got possession of half of the land, no right survived under section 31(3) to her or her successor-in-title to seek the remaining land for personal cultivation having regard to the bar contained in section 31C. If the widow-landlord and her successor-in-title lost the right to

terminate the tenancy in regard to the remaining land (having regard to the bar contained in section 31C) and therefore, section 31(3) ceased to apply, it follows that section 32F also did not apply. This is because, the right has to be exercised under section 32F(1), only where section 31(3) applied. If section 32F(1) did not apply, there was no need at all for the tenant to issue any notice of intimation to the landlord or to the successor-in-title of the landlord proposing to purchase the land under section 32F(1A).

13. Unfortunately, this aspect of the matter has been completely overlooked by the High Court and the authorities under the Act. The authorities under the Act proceeded on the assumption that even where a widow-landlord had terminated the tenancy and taken possession of the permissible extent of tenanted land, section 31(3) would continue to apply and consequently, section 32F will also apply, and therefore, there was a need for the tenant to give a notice of intimation of purchase under section 32F(1A), on the death of Anusuyabai. The High Court, however, did not examine this aspect at all as it proceeded on the basis that the widow-landlord did not terminate the tenancy and take possession of the permissible extent of land.

14. As the Appellant's case is governed by section 31(1), 31B(1) and 31C, rent for the land remaining with the tenant (after the landlord has taken half the land under section 31(1) of the Act) had to be apportioned as provided in section 31D, and the liability to pay such rent would continue until price for the land is determined under section 32G(5) on either the landlord or the tenant approaching the Tribunal, and such price is paid by the tenant.

15. Learned counsel for the respondent relied on the decisions of this Court in *Amrit Bhikaji Kale & Ors. V. Kashinath Janardhan Trade & Anr.* [1983 (3) SCC 437], *Anna Bhau Magdum (d) by LRs. v. Babasaheb Anandrao Desai* [1995 (5) SCC 243], *Appa Narsappa Magdum (D) through LRs. v. Akubai Ganapati Nimbalkar & Ors.* [1999 (4) SCC 443] and *Balchandra Anantrao Rakvi & Ors. V. Ramchandra Tukaram (Dead) by LRs. etc.* [2001 (8) SCC 616], to contend that the tenant has to issue a notice under section 32F within the period prescribed and if he fails to do so, he loses the right to purchase the land and the landlord will become entitled to the same absolutely. These were all cases where the landlord under disability had not sought possession for personal cultivation under section 31(1) and where admittedly, section 31(3) and 32F applied and consequently, there was an obligation on the part of the tenant to send an intimation under section 32F (1A). None of the cases related to a widow-landlord who had terminated the tenancy during her lifetime and taken possession of a portion of the tenanted land. Therefore, the said decisions will not apply.

16. As a consequence, we allow this appeal and set aside the order of the High Court and those of the authorities below and hold that the appellant-tenant continued to be the tenant of the land which remained with him after delivering half of the land to the landlord Anusuyabai in pursuance of the order dated 30.6.1960 made on her application under section 31(1) read with section 29 of the Act. The appellant shall be entitled to restoration, if he has been dispossessed by the respondent from

any part of his land in Gat No.332 in pursuance of the order of SDO/Revenue Tribunal/High Court. Parties will also be entitled to seek benefits/reliefs referred to in para 14 above.

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