

Nos.1 and 2 Through Its General Vs. Nos.1 to 3 Through

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Court : Mumbai Aurangabad

Decided On : Dec-07-2010

Judge : S. S. Shinde, J.

Acts : Bombay Tenancy and Agricultural Lands Act - Sections 32(O), 29, 32(F), 32(P), 32(P), 25(1); [Constitution of India](#) - Article 227

Appeal No. : WRIT PETITION NO.536 OF 1992 WITH WRIT PETITION NO.3695 OF 1998

Appellant : Nos.1 and 2 Through Its General

Respondent : Nos.1 to 3 Through

Advocate for Def. : Mr. B.V. Wagh, Adv

Advocate for Pet/Ap. : Mr. R.L. Kute, Adv.

Judgement :

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1 The Writ Petition No.536 of 1992 has been filed, challenging the judgment and order dated 21st April, 1990 passed by the Maharashtra Revenue Tribunal in Revision No.MRT/AH/X/6/88 (TNC.246/88) Pune-1.

The Writ Petition No.3695 of 1998 has been filed, challenging the Judgment and Order dated 27th January, 1994 passed by the Sub Divisional Officer, Sangamner

in Appeal No. 13 of 1992 and confirmed by the Maharashtra Revenue Tribunal in Revision No.MRT.AH.III.4/94 (TNC.B.74/94) Pune-1, by judgment and order dated 22nd April, 1998. 2 The relevant facts as disclosed in the Writ Petitions are as under:

The petitioners herein are the original tenants in respect of land Survey No. 226-1/A, admeasuring 0.53 R assess at Rs. 2.45 pasie and Survey No. 178-1/B, admeasuring 1 Hectar 35 R assess at Rs. 6.30 Paise. These lands are situated at Village Nathpatlachiwadi, Tq. Kopergaon, Dist. Ahmednagar. The said lands were taken on lease by the petitioners prior to 1st April, 1957. However, the original land-lord namely Namdeo V. Dhanvate was lunatic, he died on 27th June, 1971. After his death, he has succeeded by his widow. It is the case of the petitioners that since the original land-lord Namdeo V. Dhanvate himself was lunatic, and after his widow succeeded to the said property, therefore, the said property could not be purchased by the petitioners, in view of the provisions of Section 32(F) of Bombay Tenancy and Agricultural Lands Act. Thereafter, the said widow i.e. land-lady, died on 16th October, 1981 who is succeeded by the respondents herein. It is the case of the petitioners that the petitioners after the death of Godabai gave a notice on 8th October, 1982 for purchasing the said land. According to the petitioners, the said notice was given within the stipulated period of two years from the death of said land-lord.

3 It is further case of the petitioners that despite the said fact that the notice of purchase was given to the respondents, the respondents filed T.N.C. Case No. 150 of 1982, under Section 32(O) and Section 29 of the Bombay Tenancy and Agricultural Lands Act (for short, referred to as the Tenancy Act), for resumption of the said land on the ground that the present petitioners failed to purchase the said land within the period of two years from the death of the land-lady. The said application was dismissed by the Tenancy Awal Karkoon on 17th January, 1986.

4 Being aggrieved by the Judgment and Order of the Awal-Karkoon, the respondents herein preferred appeal No. 25 of 1986 and said appeal came to be dismissed. Against the said order, the respondents herein preferred revision No.246 of 1988 before the Maharashtra Revenue Tribunal. The Maharashtra

Revenue Tribunal, was pleased to observe that since the original land-lord died on 27th June, 1971, therefore, the petitioners ought to have purchased the said land within two years from his death. However, since they have not purchased the said land within the period of two years under Section 32(F) of Bombay Tenancy and Agricultural Lands Act, and therefore, they are not entitled to purchase the said land, and therefore, they cannot retain the possession of the suit land. The matter was remanded to the Trial Court for disposal of the suit land under Section 32(P) of the Bombay Tenancy and Agricultural Lands Act, and the order passed in appeal No. 25 of 1986 by the appellate authority was set aside.

5 Being aggrieved and dis-satisfied by the Judgment and order passed by the Maharashtra Revenue Tribunal, the petitioners have filed Writ Petition bearing No.536 of 1992, before this Court, and this Court granted stay to the said orders on 20th March, 1992.

6 It is the case of the petitioners that, in the meantime, the respondents filed an application on 16th October, 1990, alleging that the petitioners have not paid the rent despite the fact that the notices were issued to them on 13th March, 1989, 5th July, 1989 and 11th June, 1990, and therefore, the tenancy to be terminated. The said application was dismissed by the tenancy Awal Karkoon by his order dated 30th March, 1992, holding that the earlier proceedings were initiated and those are decided in favour of the applicants therein before him, as well as in appeal, and same are now pending before the High Court. Therefore, the said application is not tenable and therefore, the same was rejected. 7 It is further case of the petitioners that being aggrieved by the order dated 30th March, 1992, the appeal bearing Tenancy Appeal No. 13 of 1992 was filed before the Sub Divisional Officer, Sangamner by the respondents herein, and the Sub Divisional Officer, Sangamner held that, the Maharashtra Administrative Tribunal, passed an order, directing to the Trial Court to dispose of the land under Section 32(P) of the Bombay Tenancy and Agricultural Lands Act, and the said application is not decided, and therefore, unless the tenants are evicted under Section 23(P), the tenants are liable to pay rent. It has been further held that the tenants having not paid the rent from 1971, the tenants liable to be evicted under Section 25(1) of the Bombay Tenancy and Agricultural Lands Act. The appeal came to be allowed.

8 The petitioners being aggrieved by the said order in appeal, preferred revision being revision No.MRT.AH.III.4/94 (TNC.B.74/94) Pune-1. In the said revision application, the petitioners contended that since the proceedings already pending before the High Court in Writ Petition No.536 of 1992, the present proceedings cannot be entertained. The petitioners have become deemed tenants, therefore, the petitioners are not liable to pay rent, and therefore, tenancy cannot be terminated on that ground. Similarly, no prior notice have been given, issuing notice is mandatory. Despite the said fact, Maharashtra Revenue Tribunal, has dismissed the revision by his order dated 22nd April, 1998.

9 It is the contention of the petitioners that the they are the tenants prior to 1st April, 1957. However, original land-lord was lunatic and therefore, in view of the provisions of Section 32(F), the petitioners could not purchase the suit land, as the land-lord himself was lunatic. The petitioners states that after the death of the land- lord, he is succeeded by widow Godabai. It is the case of the petitioners that since the widow Godabai was also disabled, in view of the provisions of 32(F), the petitioners could not purchase the said land, as long as the widow Godabai was alive. The said Godabai died on 16th October, 1981 as a result of which the present respondents succeeded to her properties. It is the case of the petitioners that immediately, thereafter, they gave notice on 8th October, 1982 for purchase of the suit land. Therefore, the petitioners deemed to have become owners of the said land. However, said contention was negated by the Tribunal.

The petitioners being aggrieved by the Judgment and Order passed by the Maharashtra Revenue Tribunal, dated 27th January, 1994 passed by the Sub Divisional Officer, Sangamner in Appeal No.13 of 1992 and confirmed by the Maharashtra Revenue Tribunal in Revision No.MRT.AH.III.4/94 (TNC.B. 74/94) Pune-1, by judgment and order dated 22nd April, 1998 filed Writ Petition No.3695/1998, and being aggrieved by the judgment and order dated 21st April, 1990 passed by the Maharashtra Revenue Tribunal in Revision No.MRT.AH.X.6/88 (TNC.B.246/88) Pune-1, filed Writ Petition No.536 of 1992.

10. The learned Counsel for the petitioners submitted that the revision application No.MRT.AH.X.6/88 (TNC.B. 246/88) & Revision No.MRT.AH.III.4/94

(TNC.B.74/94) filed by the respondents should not have been allowed by the Maharashtra Revenue Tribunal. It is submitted that the Tahsildar as well as appellate authority i.e. Sub Divisional Officer held against the respondents and, therefore, the Maharashtra Revenue Tribunal should not have interfered in the judgment and order of the Tahsildar as well as the Sub Divisional Officer. It is further submitted that the Tahsildar as well as the Sub Divisional Officer had taken the view that the provisions of section 32-P are not applicable and therefore, there was no case for interference by the Maharashtra Revenue Tribunal. It is further submitted that in view of the provisions of section 32-F the Maharashtra Revenue Tribunal has erroneously held that the provisions of section 32-P of the Tenancy Act are applicable. It is further submitted that the Tahsildar as well as the Sub Divisional Officer had rightly held that the application under Section 32-P is not maintainable. Therefore, the learned Counsel for the petitioners would submit that the writ petition deserves to be allowed.

11. The learned Counsel for the respondents relied upon the judgment and order of the Maharashtra Revenue Tribunal and submitted that the order passed by the Maharashtra Revenue Tribunal in Revision Application needs no interference under the extraordinary jurisdiction of this Court under Article 227 of the [Constitution of India](#).

12. The argument of the learned Counsel for the petitioners that the widow who succeeded the original landlord Namdeo was also under the disability category and therefore, there was no question of giving any purchase notice prior to the death of widow, is required to be rejected in the light of para 7 of the reported judgment in the case of Harshavardhan Shrinivas Potnis v. Mahadu Pundalik Gangurde (AIR 1980 BOMBAY 198). Para 7 of the said judgment reads, thus: "7. There can be no doubt that the general provisions with regard to the statutory transfer of ownership made in section 32(1) deal with cases where the landlords were entitled to exercise their right of resumption under section 31(1) excluding the landlords referred to in section 31(3), who have not exercised their right of resumption. The provisions of section 32 will not come into operation where the landlords, referred to in sub-section(3) of section 31, have not exercised their right of resumption. Provision had, therefore, to be made in order to provide for

statutory right of ownership in respect of tenants of the class of landlords referred to in sub-section(3) of section 31. This provision has been made in section 32(F)(1) (a). Section 32(F) clearly refers to a landlord who is a minor or a widow or a person subject to any mental or physical disability. It is then provided that the tenant of such a landlord shall have the -right to purchase such land under section 32 and the conditions which are required to be satisfied by such a tenant are specified in section 32F(1). The period during which such a right is to be exercised is also prescribed in section 32F(1). The Legislature has clearly laid down that the right to purchase by such a tenant has to be exercised within one year from the expiry of the period during which landlord referred in section 32F(1) is entitled to terminate the tenancy under section 31. The words "Such landlord" relate to the landlords mentioned in the opening part of the sub- section viz. a minor, a widow or a person subject to any mental or physical disability. Therefore, section 32 and 32(F) have to be read together. As already pointed out, right to purchase is a right created by section 32. Section 32 did not and could not operate in certain cases where no steps were taken by either a minor, or a widow or a person subject to any mental or physical disability in exercise of right of resumption under section 31(1) and that is why a special provision had to be made under section 32(F) to deal with such cases. Therefore, for ascertaining the period during which right to purchase has to be exercised, we must go back to section 31(3), because it is there that the period during which a minor or a widow or a person subject to any mental or physical disability, is entitled to terminate the tenancy is provided. When we go back to section 31(3), so far as the widow is concerned, a provision is made in sub-clause(2), the" effect of which is that where the landlord is a widow, an application for possession may be made by the successor-in title of a widow within one year from the date on which her interest in the land ceases to exist. Therefore, where in a case like the instant one, a widow had died bequeathing certain property to the minor, the minor becomes successor-in-title of the widow. This successor-in-title is entitled within one year from the date of the death of the widow to make an application for possession. Thus within one year from the expiry of this period of one year that a tenant must exercise his right of purchase. The fact that he is a minor at the time of the death of the widow is, in our view, wholly irrelevant and such a minor will not be entitled to contend that he can take advantage of the

extended period in section 31(3) so as to enable him to terminate the tenancy of the tenant of the land bequeathed to him by making an application for possession after he attains majority. Section 31(3) deals only with the landlords who were disabled landlords at the time when the notice was required to be served and an application for possession could have been made under section 31(2). If a landlord wants to take advantage of the extended period in sub. section(3) of section 31, two conditions must be satisfied. One is that he must fall under one of the categories mentioned in subsection(3) of section 31 and second is that he must be the landlord on 31st December 1956 when a notice to terminate the tenancy has to be given. If anyone of these two conditions are not satisfied, then benefit of section 31(3) cannot be availed of by a landlord, the minor who succeeds to the interest of a widow after 31st December 1950 is 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 31-12- 1956. The period during which the minor after having succeeded to the widow could have terminated the tenancy of the tenant under section 31(3) is one year from the time of her death. The intimation required to be given under section 32F(I A) 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."

13. Perusal of the para 7 of the judgment in Harshavardhan's case (supra) would clearly spell out that if the landlord wants to take advantage of the extended period under subsection (3) of Section 31 of the Tenancy Act, two conditions must be satisfied; One is that he must fall under one of the categories mentioned in subsection(3) of section 31 and second is that he must be the landlord on 31st December 1956 when a notice to terminate the tenancy has to be given. If anyone of these two conditions are not satisfied, then benefit of section 31(3) cannot be availed of by a landlord. The Division Bench of this Court in the said judgment has also considered the right of the tenant to give purchase notice. The Court has also held that the postponement of the right to purchase land conferred on the tenant by the provisions of the Tenancy Act can take place only once and right of tenant to purchase the land in the instant case was postponed because the landlord

Namdeo was a lunatic person. In the instant case, Namdeo died in the year, 1971. Godabai, widow of Namdeo succeeded him. It is an admitted position that on the appointed date, the widow Godabai was not landlord of the suit property. Since only one postponement of the right to purchase is conferred on the tenant and said postponement by the petitioners herein was done during the survival of Namdeo and after death of Namdeo in 1971, there was no question of further postponement of the purchase notice. The petitioners herein should have given purchase notice within a period of two years from the death of Namdeo.

14. Therefore, the contention of the petitioners that after death of Godabai, the petitioners have given notice within a period of two years, cannot be accepted. As stated earlier, the petitioners failed to give purchase notice within two years from the date of death of Namdeo and, thereby, they have lost the right to purchase the suit property. Therefore, in my opinion, there is no substance in this writ petition and the same deserves to be dismissed.

15. It is also not out of place to mention at this juncture that the Writ Petition No.3765 of 1991 was filed by the tenants against the landlord. Incidentally, landlords therein are the respondents herein. In that case, this Court has exhaustively dealt with the arguments of the petitioner therein that after death of Godabai, he had given notice within two years, and therefore, he is entitled to purchase the land, has been negated and rejected. In that case also this Court has held that from the death of Namdeo, the tenants therein should have given notice within two years and since no notice was given within two years, they lost the right to purchase the suit property.

16. So far as another judgment and order passed in revision by the Maharashtra Revenue Tribunal dated 22nd April, 1998, which is under challenge in Writ Petition No.3695/1998, is concerned, the tribunal on the basis of the evidence and material brought on record, recorded the finding of fact, as under: "... it is found that the present revision applicants neither paid the rent nor deposited the rent in the Tahsil Office and nor any evidence is produced that they had paid the rent to the landlord-opponents. The proceeding under Sec. 32-P of the Tenancy Act, though it is not finalized and till the revision applicants are evicted from the land, their

tenancy right are subsisted in the disputed land. So, there cannot be a bar to the proceedings under Sec. 14, 25(2) and 29 of the Tenancy Act. So admittedly, the application was maintainable before the trial court."

17. Therefore, the Maharashtra Revenue Tribunal has held that since the petitioners herein were admittedly tenants of the suit land, they were bound to pay some rent. However, admittedly rent had not been paid by them. Therefore, the tribunal has held against the petitioners by dismissing the revision applications.

18. Taking overall view of the matter, and taking into consideration the entire factual matrix and more particularly, the impugned judgments and orders passed in Revision Applications by the Maharashtra Revenue Tribunal and in the light of the above discussion, I do not find any reason to interfere in the findings recorded by the Maharashtra Revenue Tribunal.

19. Hence, the writ petitions are devoid of merits and the same are dismissed. Interim relief, if any, stands vacated. Rule stands discharged.

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