

Rangnath Pandharinath Gosavi (since deceased by his heirs and legal representatives Dr. Sacchidanand Rangnath Gosavi, Smt. Alka Balkrishna Inge and Sou. Kusum Damodar Kulkarni) Vs Sakharam Shiva Bhosale (since deceased by his heirs and legal representatives Sahebrao Sakharam Bhosale, Sou. Wanchala Tukaram Awade, Sou. Vaijayanta Sakharam Bhosale (since deceased by her heirs and legal representatives viz Sahebrao Sakharam Bhosale, Sou. Wanchala Tukaram Awade, Sou. Nandubai Shamrao Kharat, Sou. Chayya Vilas Gangawane, Sou. Indubai Ashok Jagtap and Kumari Sindhubai Sakharam Bhosale now Sou. Sindhubai Vivekdada Jawale), Sou. Nandubai Shamrao Kharat, Sou. Chhayya Vilas Gangawane, Sou. Indubai Ashok Jagtap and Kumari Sindhubai Sakharam Bhosale)

Court: Bombay High Court

Date of Decision: June 8, 2004

Acts Referred: Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964 " Section 32K(3), 32M, 32M(2), 33M

Constitution of India, 1950 " Article 227

Citation: (2004) 5 BomCR 34

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: M.V. Sali, for the Appellant; V.S. Gokhale, for Respondents 1, 2, 5 and 7 and S.P. Thorat, for Respondent No. 3(a), for the Respondent

Final Decision: Dismissed

Judgement

A.M. Khanwilkar, J.

This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed

by the Maharashtra Revenue Tribunal, Pune dated december 12, 1985 in Revision No. 1 MRT-NS-10/83. The land in question is Gat No. 1 and

79 situated at Nigadi, Tahsil Koregaon. The Petitioners claim to be landlord in respect of the suit land, whereas, the Respondents are the tenants

thereof. Since the Respondents were in occupation of the suit land as tenants on the tillers day, the Respondents became deemed purchaser. In

that backdrop, the Authority proceeded to fix the purchase price in respect of the suit lands. However, the purchase price was not paid by the

Respondents tenants inspite of repeated reminders sent by the Petitioners. Having regard to the continuous representations made by the

Petitioners, the Additional Tahsildar and Agricultural Lands Tribunal, Koregaon, proceeded to issue following communication to the Petitioners on

3rd August 1977. The same reads thus:

Sir,

The action to recover arrears of installments of purchase price from Sakharam Shiva Bhosale has been taken as per procedure to recover as

arrears of land revenue. In this matter the land belonging to the tenant has been acquired and the compensation as yet is not paid to the tenant.

Therefore, the Special Land Acquisition Officer No. 3 (Command Area) Krishna Dhom Project, Satara has been informed to deposit the said

amount to A.L.T. Account and no sooner the same is received; it will be paid to you. Similarly, the tenant has been asked if he wants any lean on

Tagai. If the amount of arrears is not recovered in this manner; then the purchase will be declared ineffective and till then you application is filed.

Yours faithfully,

Sd/-

Addl. Tahsildar & A.L.T. Koregaon

2. The Respondents, being aggrieved by the observation made in the last sentence of the said communication that the purchase will be declared

ineffective, preferred appeal before the Sub-Divisional Officer. The Appellate Authority, on examining the relevant provisions of the Act, found that

it was not open to straightaway declare the purchase ineffective, unless necessary procedure prescribed by the relevant provisions was to be

completed. In the circumstances, the Appellate Authority allowed the appeal preferred by the Respondents and remanded the matter to the first

Authority to decide the same in accordance with law, on merits, in the light of observations made in the said order. Against the said remand order,

Petitioners carried the matter in Revision before the Maharashtra Revenue Tribunal. The Tribunal, on examining the rival contentions, was pleased

to affirm the approach of the Appellate Authority and declined to interfere in the Revision Application. The Revision Application accordingly came

to be dismissed on 12 December 1985 by the impugned Judgment and Order and the remand directed by the Appellate Authority was confirmed.

This decision is subject matter of challenge in the present Writ Petition.

3. Mr. Sali for the Petitioners contends that there is no provision in the Act whereby, the grievance made by the Petitioners regarding non-payment

of the determined purchase price can be recovered from the tenant, and the direction issued by the Appellate Authority, much less, affirmed by the

Revisional Authority to decide the sale effective or ineffective u/s 33-M of the Act, was inappropriate. According to him, no such declaration could

be granted in exercise of powers u/s 32-M of the Act. On the above submissions, learned Counsel contends that neither the order of remand, nor

the decision passed by the Revisional Authority can be sustained. These are the only submissions advanced before me.

4. On the other hand, Counsel for the Respondents have adopted the reasons given by the Authority to support the conclusion reached by the said

Authorities in remanding the case to the First Authority for re-examination of the case to find out whether the Respondents are still in arrears of

purchase price or not, and to decide whether the sale declared in favour of the Respondents, is effective or ineffective u/s 32-M of the Act.

5. Having considered the rival submissions, it is seen that the Respondents have been declared as deemed purchasers and the appropriate

Authority determined the purchase price to be paid in respect of the suit lands. The record indicates that the Respondents committed default in

payment of the said purchase price, for which reason, the Petitioners made representation to the concerned Authority. Indeed, the Respondents

were in default, but that would not vest power in the First Authority to straightaway declare that the purchase would become ineffective if the

Respondents fail to pay the outstanding dues as stated in the communication dated 3rd August 1977. On the other hand, the Scheme of relevant

provisions seems to be that the tenant should be called upon to pay the arrears of purchase price as arrears of land revenue under Sub-section (3)

of Section 32K of the Act. By virtue of Section 32M (2) of the Act the purchase would become ineffective on failure of payment of purchase price

in time in lumpsum or in installments. This provision however, further stipulates that the tenant purchaser if nevertheless continue to be in possession

at the commencement of the Bombay Tenancy & Agricultural Lands (Amendment) Act, 1964, then the purchase of the land shall not be deemed

to be ineffective until the Tribunal fails to recover the amount of the purchase price under Sub-section (3) of Section 32K of the Act. This is

precisely, what has been now directed by the Appellate Authority for being considered by the First Authority after remand. The Tribunal has

affirmed that view taken by the Appellate Authority. To my mind, there is no infirmity either in the view taken by the Appellate Authority or the

Tribunal. The argument canvassed on behalf of the Petitioners that the Petitioners landlords are rendered remediless in recovering the purchase

price determined in respect of the disputed lands, does not commend to me. There is ample remedy provided by virtue of Section 32M of the Act

as referred to above and the Appellate Authority, while remanding the case to the Authority, has directed the First Authority to take recourse to

that remedy upon the material that may be produced by the rival parties. Those questions will be decided on its own merits, in accordance with

law.

6. In the circumstances, I see no reason to interfere in this Writ Petition. The same is dismissed with costs.