

**(2003) 01 BOM CK 0125**

**Bombay High Court**

**Case No:** Writ Petition No. 1760 of 1987

Rangnath Dashrath Vadar since  
deceased through heirs Kalavati  
Rangnath Vadar and Others

APPELLANT

Vs

Bhagatsing Vithalsing Kotwal

RESPONDENT

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**Date of Decision:** Jan. 8, 2003

**Acts Referred:**

- Bombay Inferior Villages Watans Abolition Act, 1958 - Section 4, 9
- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 32R, 88(1)

**Citation:** (2003) 1 ALLMR 1142 : (2003) 3 BomCR 18 : (2003) 2 MhLj 381

**Hon'ble Judges:** S.A. Bobde, J

**Bench:** Single Bench

**Advocate:** S.G. Karandikar, for the Appellant; None, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S.A. Bobde, J.

The petitioner, who is a tenant of agricultural lands, challenges the order of the Maharashtra Revenue Tribunal dated 1-1-1987 by which that Tribunal has confirmed the order of the two Courts below. In effect, the Maharashtra Revenue Tribunal has confirmed the orders by which the purchase of the land in question by the petitioner-tenant has been declared ineffective and the land has been directed to be disposed of under the provisions of Section 32P of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Bombay Tenancy Act").

2. The petitioners are heirs of the original tenant and the respondent was the landlord. The land in question is survey No. 30, situate at village Karkamb in Pandharpur taluka.

3. The land in question is an inam land governed by the Bombay Inferior Village Watans Abolition Act, 1958 (hereinafter referred to as the "Watans Abolition Act").

The respondent is a Watandar. On 5-2-1969, proceedings for purchase of the land by the petitioner were dropped because the respondent watandar was a minor. The petitioner gave an intimation of his willingness to purchase the land on 29-8-1971. On 19-9-1973 the respondent attained majority.

4. It appears that on 5-6-1973, 32G proceedings instituted were again dropped on the ground that, the land had not been regranted under the Watans Abolition Act. In 1976 these proceedings were again initiated and they were dropped on 28-12-1976 apparently on the statement made by the landlord that he had not paid occupancy price under the Watans Abolition Act. The petitioners preferred an appeal against the dropping of the proceedings. By an order dated 14-10-1981, the S.D.O. allowed the appeal and remanded the matter back to the A.L.T. for a fresh decision. While remanding the matter, the S.D.O. made a specific direction to consider the effect of the petitioners having paid the occupancy price under the Watans Abolition Act instead of the landlord.

5. After the remand on 31-12-1983, the A.L.T. found that the tenant was not entitled to purchase the land in view of the fact that there was no intimation given by the petitioners u/s 32F within the period contemplated by that section. Section 32F requires a tenant to give an intimation within one year from the expiry of the period during which the landlord is entitled to terminate the tenancy u/s 31. The period provided by Section 31 is one year.

6. The A.L.T. observed that the landlord had not paid the occupancy price for regrant within the stipulated period and further observed that such lands can be regranted in favour of a tenant who has paid the occupancy price.

7. The petitioners appeal against the order of the A.L.T. has been dismissed by the Asstt. Collector on 21-1-1986. The M.R.T. has by the impugned order confirmed the orders of the two Courts below.

8. Mr. Karandikar, learned counsel for the petitioners, submitted that the authorities under the Bombay Tenancy Act have erred in not properly applying the provisions of the Watans Abolition Act. According to the learned counsel, under the Watans Abolition Act, unless the land is regranted to either the landlord or an authorised holder who may be a purchaser from the landlord or even the tenant, the provisions of the Bombay Tenancy Act which provide for a statutory purchase by the tenant cannot be applied. Needless to say, if the land is regranted to a tenant, then there will be no question of the tenant seeking a statutory purchase.

9. It is necessary to consider the relevant provisions of the Watans Abolition Act to appreciate the contention on behalf of the petitioners. The Watans Abolition Act was enacted to abolish the hereditary village offices of degree lower than that of a revenue or police patel or village accountant and the watans appertaining thereto prevailing in the pre-Reorganisation State of Bombay, excluding the transferred and certain other territories. The provisions relevant to the present case are as follows :--

"4. Notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a court or in the existing watan law, with effect on and from the appointed date,

(1) all inferior village watans shall be and are hereby abolished,

(2) all incidents (including the right to hold office and watan property, the right to levy customary fees or perquisites in money or in kind, and the liability to render service) appertaining to the said watans shall be and are hereby extinguished,

(3) subject to the provisions of Sections 5, 6 and 9 all watan land shall be and is hereby resumed and shall be subject to payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land;

Provided that such resumption shall not affect the validity of any alienation of such watan land made in accordance with the provisions of the existing watan law or the rights of an alienee thereof or any person claiming under or through him."

The effect of the above provision is that it abolishes all inferior village watans which upon abolition stand resumed subject to the provisions of Sections 5, 6 and 9.

10. Section 5 provides for a regrant of watan land to the watandars. That Section reads as follows :--

"5. (1) A Watan land resumed u/s 4 shall, in cases not falling under Sections 6 and 9 be regranted to the watandar of the watan to which it appertained on payment by or on behalf of the watandar to the State Government of the occupancy price equal to three times the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the watandar shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; and all the provision of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the suit land;

Provided that in respect of the watan land which was not assigned under the existing watan law as the remuneration of the inferior village hereditary office, an occupancy price equal to the amount of the full assessment of such land shall be paid by or on behalf of the watandar for the regrant of such land.

(2) If there is a failure to pay the occupancy price under Sub-section (1) within the prescribed period and in the prescribed manner, the watandar shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily evicted therefrom by the Collector in accordance with the provisions of the Code.

(3) The occupancy of the land regranted under Sub-section (1) shall not be transferable or partible by metes and bounds without the previous sanction of the

Collector and except on payment of such amount as the State Government may by general or special order determine."

Sections 6 and 9 provide for regrant of land to the authorised holders and unauthorised holders, respectively. These Sections have no application to the present case.

11. Section 8 of the Watans Abolition Act reads as follows:--

"8. If any watan land has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law shall apply to the said lease and the rights and liabilities of the holder of such land, and his tenant or tenants shall, subject to the provisions of this Act, be governed by the provisions of the said law.

Explanations. - For the purposes of this section the expression "land" shall have the same meaning as assigned to it in the tenancy law."

This section provides that the provisions of the tenancy law shall apply to the watan land which has been legally leased, but nevertheless makes the application "subject to the provisions of this Act".

12. Thus, the legislative scheme of the Watans Abolition Act provides for resumption of the land, its regrant to the watandar or an authorised or an unauthorised holder. As far as leases are concerned, the Watans Abolition Act provides that the leases shall be governed by the relevant tenancy law, however, "subject to the provisions of this Act". It is, therefore, clear that the Act requires its own provisions pertaining to resumption and regrant to be complied with, even in a case of land lawfully leased. In other words, the tenancy law is made applicable to a subsisting lease only after compliance with the provisions of resumption and regrant of the lands to the landlord. Indeed, there can be no escape from that, because if there is no regrant under the provisions of the Watans Abolition Act, the land stands resumed vide Section 4; and if not regranted, it is clear that the title to the land would vest exclusively in the State until the State parts with it by regrant. In a situation where there is no regrant, it would not be possible to apply the provisions of the Bombay Tenancy Act, particularly those relating to the deemed purchase of the land from the landlord and determination and payment of purchase price to the landlord. This is so because the tenant, under the provisions of the Bombay Tenancy Act, is deemed to be a purchaser from the landlord and is liable to pay the purchase price to the landlord. The Bombay Tenancy Act does not contemplate the State Government in whom the lands would vest on resumption if not regranted as a landlord. This is further clear from Section 88(l)(a) which reads as follows:--

. "88. (1) Save as otherwise provided in Sub-section (2), nothing in the foregoing provisions of this Act shall apply, --

(a) to lands belonging to or held on lease from, the Government."

There appears to be no doubt whatsoever about the fact that the Watans Abolition Act deals with hereditary offices created by the Bombay Hereditary Offices Act, 1874. Therefore, it must be held that unless the land is regranted, after resumption, it would not be possible to apply the provisions of the Bombay Tenancy Act, in particular Sections 32 to 32R.

13. In the present case, the Maharashtra Revenue Tribunal while upholding the orders of the Courts below has gone half-way and held that there is no relationship of landlord and tenant because there is no regrant of the land. However, the Tribunal has, contradictorily, held that the provisions of the Bombay Tenancy Act apply and as a result, upheld the order of the Courts below declaring the purchase to be ineffective and directing that lands be sold in accordance with Section 32P. It is not possible to uphold this reasoning. If the Bombay Tenancy Act does not apply to a land which is not regranted but stands resumed, it is difficult to see how any of the provisions, including Sections 32 to 32R, including Section 32P can apply.

14. In the result, I find that the relationship between the parties in respect of the land in question would not be liable to be governed by the provisions of the Bombay Tenancy Act, the lands having been resumed by the State Government under the provisions of the Watans Abolition Act unless the land is regranted, in accordance with the provisions of the latter Act. Accordingly, the Writ Petition is allowed in terms of prayer Clause (a). In the result, the proceedings u/s 32G as well as all the orders passed therein are quashed and set aside. The rule is made absolute. No order as to costs.

15. P. S. to give ordinary copy of this judgment to the parties concerned.