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AIR 1980 Bom 198 : (1981) 83 BOMLR 59 : (1980) MhLj 359

Bombay High Court

Case No: Special Civil Application No. 2746 of 1974

Harshavardhan Shrinivas Potnis	APPELLANT
Vs	
Mahadu Pundalik Gangurde	RESPONDENT

Date of Decision: July 16, 1979

Acts Referred:
Bombay Tenancy and Agricultural Lands Act, 1948 â€" Section 29, 31, 31(1), 31(2), 31(3)

Citation: AIR 1980 Bom 198 : (1981) 83 BOMLR 59 : (1980) MhLj 359

Hon'ble Judges: Deshpande, J; Chandurkar, J

Bench: Division Bench

Advocate: V.M. Limaye, for the Appellant; M.V. Sali, for the Respondent

Judgement

Chandurkar, J.
This petition has been referred to the Division Bench because the view taken by a learned Single Judge of this Court in

Tungabhadrabai Deorao Bhagwat Vs. Nanasaheb Ganpatrao Khalate, was doubted by the learned Single Judge who had heard the petition in so

far as the decision in Tungabhadrabai''s case, holds on a construction of section 32-F of the Bombay Tenancy and Agricultural Lands Act, 1948

(hereinafter referred to as the ""Tenancy Act"") that if one person of ex-empted category is succeeded by another person of the exempted category,

the Tillers'' day is postponed till the disability of the successor ceases.

2. It is necessary to briefly state the tacts on which the questions raised in the petition have to be decided. Fields Survey Nos. 44 and 45 of village

Kotamgaon, Tahsil Niphad, District Nasik, belonged to one Girijabai, who was admittedly a widow and had not exercised her right of resumption

u/s 31 till her death. Girijabai died on 4/6/1965. By a will executed by her, she bequeathed the two fields in question in favour of the Petitioner

who was then minor having been born on 13/6/1956. He attained majority on 13/6/1976.

3. Proceedings u/s 32-G of the Tenancy Act were commenced by the Tahsildar of Niphad. While determining whether the Respondent-tenant was

entitled to purchase the fields, the Tahsildar took the view that the tenant having failed to give an intimation as contemplated by Section 32-F (1)

(a) within the prescribed period, the purchase had become ineffective and directed that the lands should be disposed of u/s 32-P of the Tenancy

Act. In appeal, the Additional Collector, Nasik, held that since the petitioner was a minor, the Tillers'' day was postponed for the second time till

the petitioner attained majority. This order was confirmed by the Maharashtra Revenue Tribunal while dismissing the Revision Application filed by

the petitioner.

4. It is contended by Mr. Limaye on behalf of the petitioner that Girijabai was a widow and had not exercised her right u/s 31 (1) of the Tenancy

Act and the provisions of Section 32-F would come into operation as the Petitioner was a minor at the time of her death. According to the

Petitioner, he was a successor-in-interest of the widow he could have exercised right of resumption u/s 31 within one year from the death of the

widow, the Respondent-tenant was bound to exercise his right of purchase as provided by Section 32-F (1) by giving an intimation to the

Landlord and the Tribunal in the prescribed manner within one year from the death of the widow. On the other hand, Mr. Sali, appearing for the

tenant, contended vehemently that the successor-in-interest of widow Girijabai was a minor u/s 31 (3) of the Act, the minor could apply for

possession u/s 29 within one year from the date on which he attained majority and, therefore, the period during which the tenant was entitled to

exercise his right of purchase must be taken to be the period of one year from the date on which the minor attained majority.

5. On a plain reading of provisions of Sections 31, 32 and 32-F, the contentions raised on behalf of Mr. Sail cannot be accepted.

6. The scheme of the provisions of Tenancy Act dealing with the right to apply for personal cultivation and statutory vesting of ownership is very

clear. Section 31 provides for a right of the land"" lord who is not the landlord within the meaning of chapter 3 (AA), to give a notice and make an

application for possession and terminate the tenancy of any land if he bona fide requires any land for personal cultivation or for any non-agricultural

purposes. The notice terminating the tenancy had to be served on the tenant on or before 31st December 1956. The application for possession u/s

29 has to be made on or before 31st day of March 1957. A special provision has been made u/s 31 (3) with regard to the right to terminate the

tenancy and to apply for possession in respect of three kinds of landlords who are generally described as disabled landlords. Under subsection (3)

of Section 31, it is provided that where a landlord is a minor, a notice may be given and an application for possession may be made by the minor

within one year from the date on which he attains majority. In the case of a widow, " it is provided that a notice may be given and an application

for possession maybe 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. In

the case of a person subject to mental or physical disability, it is provided that a notice may be given and an application for possession may be

made within one year from the date on which such mental or physical disability ceases to exist. We are not, in this case, concerned with the

proviso. We are also not concerned with the other incidental provisions in Sections 31A to 31D. Section 31 (3) is clearly intended to extend the

period during which proceedings for possession of land cultivated by the tenant, could be taken in cases where the landlord is a minor or a widow

or is subjected to mental or physical disability. Section 31 (3) is also on the face of it, an enabling provision because the words used are such

notice may be , given"" and: ""an application for possession .... may be made"". There is nothing in Section 31 (3) which disables the landlord

described in that provision from taking steps for obtaining possession within the period prescribed in Section 31 (2). In other words, it is only in

cases where either a minor or a widow or a person subject to mental or physical disability has not exercised his right of resumption u/s 31 (1) that

the provisions of Section 31 (3) become operative. If in a given case, a widow has already taken steps to resume cultivation u/s 31 (1), her

successor-in-interest will not be entitled to exercise any right of resumption. Similarly, if a minor has applied for possession in the sense that the

guardian of the minor has taken steps for obtaining possession u/s 31, then he cannot exercise the right for the second time after attaining majority.

Same will be the case in the case or a landlord who is subjected to mental or physical disability. The statute contemplates that in respect of the land

held by a tenant of a landlord who falls in the category referred to in Section 31 (3), a right of resumption can be exercised only once. Section 32

then deals with what is known as "the Tillers" day "or which is statutorily described as the day on which rights of ownership will vest in the tenant,

and the conditions and limitations of such vesting are specified therein. The proviso to Section 32 (1) provides that if an application for possession

u/s 29 has been made by the landlord then the tenant shall be deemed to have purchased the land on the date on which the final order of rejection

is passed and this date is referred to as the "postponed date"". The effect of the Proviso to Section 32 (1), therefore, in substance is that where

proceedings have already been taken by a landlord for restoration of possession in the exercise of right u/s 31, then the Tillers" day is determined

with reference to the day on which the final order of rejecting the application for possession is made. Then we come to Section 32-F (1)(a) which

provisions are required to be construed. The relevant part of this provision reads as follows:

Notwithstanding anything contained in the preceding sections (a)? where the landlord is a minor, or a widow, or a person subject to any mental or

physical disability the tenant shall have the right to purchase such land u/s 32 within one year- from the expiry of the period during which such

landlord is entitled to terminate the tenancy u/s 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation

to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy

u/s 31.

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one

member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such

person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the

land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in

the entire joint family property and not in a larger proportion.

Now, the plain reading of Section 32-F (1) (a) shows that it deals with the right of a tenant to purchase the lands u/s 32 in respect of those lands

where the landlord is a minor or a widow or a person subject to any mental or physical disability. This right is to be exercised as required by the

provisions in Section 32-F by the tenant giving an intimation in that behalf to the landlord and the Tribunal in the prescribed manner. An obligation

is also cast on the landlord to send an intimation to the tenant of the fact that he has attained majority. The intimation to be sent by the tenant has to

be sent before the expiry of the period during which the landlord is entitled to terminate the tenancy u/s 31. Now, what is contended by Mr. Salt is

that the landlord who had succeeded to the interest of the widow was a minor. The minor u/s 31 (3) had a right to apply for possession within one

year from the date on which he attains majority and, therefore, he could have given an intimation that he wanted to purchase the lands only after the

landlord had attained majority. What is sought--to be argued is that the minor-successor-in-interest must be treated as a minor for the purposes of

Sections 32-F and 31 (3) and, therefore, the period during which the intimation of purchase could be sent has to be decided with reference to the

time prescribed in Section 31. In our view, such a contention is wholly contrary to the scheme and spirit of the provisions of Sections 31 and 32

and 32-F.

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 u/s 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 owner ship

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 landed shall have the right to purchase such land u/s 32 and the conditions which are required to be satisfied by such a tenant

are specified in Section 32-F (1). The period during which such a right is to be exercised is also prescribed in Section 32-F (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 32-F (1) is entitled to terminate the tenancy u/s 31. The words ""Such landlord"" relate to the landlords mentioned in the

opening part of the subsection viz. a minor, a widow or a person subject to any mental or physical disability. Therefore, Sections 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 u/s 31 (1) and that is why a special provision had to be made u/s 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 mere 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 bade 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 be 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 an take

advantage of the extended period n 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 he landlords who were disabled landlord at the time

when the notice was required to be served and an application or possession could have been made u/s 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 all under one of the

categories mentioned in Sub-section (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 any one 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 1956 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 31/12/1958. The period

during which he minor after having succeeded to the widow could have terminated the tenancy of the tenant u/s 31 (3) is one year from the time of

her death. The intimation required to be given u/s 32-F (1A) by the tenant in order to exercise his right of purchase should have been given within

one year from the expiree 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.

8. It is no doubt true that a contrary view has been taken in Tungabhadrabai''s case, 1976 Bom LR 395. In that case, widow Laxmibai adopted a

son on 26th December 1957 and she died on 10th November 1958. The question which was required to be decided was whether on the death of

Laxmibai, the tenants were bound to exercise their right of purchase given to them u/s 32-F (1) (a), By giving intimation of the willingness to

purchase the land. On behalf of the landlord, it was contended that the postponement of the right of purchase conferred on the tenant by the

provisions of the Act, can take place only once and the right of the tenant to purchase the land was postponed on 1/4/1957 because the landlord

was a widow. According to the landlord''s counsel, as soon as the widow died, there could be no further postponement merely because she was

succeeded by her minor son. Negativing this argument, the learned Judge who decided Tungabhadrabai''s case observed as follows:

There is nothing in the provisions of Section 31 and Sections 32 to 32-F, which would indicate that the benefit is to be given to only one person of

the exempted category, who was a landlord on April 1, 1957 and the provisions of Section 32-F become operative on the death of such a person,

in spite of the fact that another person of the exempted category becomes the landlord on her death.

With respect to the learned single Judge, it appears to us that the importance of the fact that the person claiming benefit of Section 31 (3) should be

the disabled landlord on 31/12/1956 and 31/9/1957 has been lost sight of in that decision. We are, therefore, unable to accept the construction

placed in Tungabhadrabai''s case on the provisions of Section 32-F (1). In view of the legal position set out earlier, we are of the view that

Tungabhadrabai''s case does not lay down correct position of law and it will, therefore, have to be overruled.

9. In the instant case, the orders of the Additional Collector and the Revenue Tribunal have proceeded on a misapprehension of the provisions of

Section 32-F and they are, therefore, liable to be quashed.

10. The learned referring Judge has pointed out in his order, and in our opinion correctly, that the point referred to us being the only point to be

answered, the Petition will stand decided on that point being decided. There is no other point involved in this case. Consequently, the orders

passed by the Additional Col lector and the Maharashtra Revenue Tri bunal are quashed. Rule is made absolute with costs.

11. Rule made absolute.