(1978) 02 BOM CK 0030

Bombay High Court

Case No: Special Civil Application No. 910 of 1973

Anwarbeg Lalbeg and Others		APPELLANT
	Vs	
Sukdeo Nathu Mali		RESPONDENT

Date of Decision: Feb. 27, 1978

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 31(3), 32F, 32F(1), 32G

Hon'ble Judges: R.A. Jahagirdar, J

Bench: Single Bench

Advocate: S.M. Hussein, for the Appellant; G.M. Bhokrikar, for the Respondent

Judgement

R.A. Jahagirdar, J.

A somewhat interesting point if law has been raised by Mr. Hussein in this petition though it had not been specifically argued in any of the courts below. Being a pure question of law I have allowed it to be taken up and argued, therefore, I will proceed to decide the same.

2. Survey No. 45/2 situated in Village Ozar of Jamner Taluka in Jalgaon District was purchased by one Salimbi and her son Lalbeg in the year 1953. Lalbeg died in the year 1956 leaving behind him four minor sons as his heirs who together with Salimbi thus became the owners of the land. They are the petitioners before me. Respondent No. 1, hereinafter referred to as "the respondent", has at all relevant times been a tenant of the suit land. Further, there is no dispute that on 1st April, 1957, Salimbi was the widow and the other four owners of the land were minors. It is on this ground that proceedings initiated u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, hereinafter referred to as "Tenancy Act", were dropped and as the judgments of the courts below show, the proceedings were postponed to 3rd February, 1961. Thereafter, the proceedings u/s 32-G were resumed and in Case No. TNC-ALT-SR-14/8-71, price was fixed by the Agricultural Lands Tribunal of Jamner of 5th August, 1971. It may be mentioned here that the judgment of the Agricultural Lands Tribunal refers to the fact that the tenant and the landlords admitted that the

family of the landlord was joint family and their individual shares were not divided by metes and bounds. The judgment also mentions that since all the minor sons have become major, necessary notice has been given though it was refused by the landlord.

3. The petitioners preferred an appeal being Tenancy Appeal No. 47 of 1971, which was dismissed by the Assistant Collector of Chalisgaon Division by his judgment and order dated 22nd May, 1972. The petitioners carried the proceedings further before the Maharashtra Revenue Tribunal in its revisional jurisdiction by filing an application, being Tenancy Application No. 439 of 1972. One of the arguments advanced on behalf of the petitioners before the Tribunal was that the tenant having not exercised his right of purchase within two years from 3rd February, 1961, when the minor son of Lalbeg became major, the tenant had lost his right of purchase. This argument was rightly rejected by the Tribunal by pointing out the amendment made in 1969. According to this amendment, an intimation should be given within a period of two years from the commencement of the Act. Since that had been done, the challenge made on behalf of the petitioners failed. It has been further mentioned in the judgment of the Maharashtra Revenue Tribunal that the Advocate of the petitioners did not challenge the legality of the orders passed by the authorities below on any other ground. In view of this fact the Tribunal had no difficulty in dismissing the revision application filed by the petitioners by its judgment and order dated 16th December, 1972. That order is the subject matter of the challenge in the present petition.

4. Mr. Hussein, the learned Advocate appearing in support of the petition has raised, as already mentioned in the beginning of this judgment a point of law, going as he says to the root of the matter. He pointed out that the authorities below proceeded to treat the petitioners as belonging to the joint family and since one of them had become major the tenant was entitled to purchase the land as per the proviso to section 32-F (1) (a). According to Mr. Hussein, the proviso to section 32(1)(a) is not applicable at all to the facts of this case because the landlords being Muslims do not constitute a joint family as mentioned in the said proviso. If, therefore, one of the persons became major then the tenant would not be entitled on that account to purchase the land. After the death of Lalbeg, his minor sons and Salimbi the widow are holding the land as joint owners but as tenants in common.

5. There is no difficulty in accepting this submission of Mr. Hussein because the joint family is unknown to the Muslim Law. When the members of a Mohammedan family live in a common locality they do not form a joint family in the sense in which that expression is used in Hindu Law. If, therefore, after the death of Lalbeg his sons succeeded to his property they must be said to have done so as tenants in common.

6. This by itself, in my opinion will not render the order passed by the authorities below invalid though the landlords are group of persons who are under one or the disability mentioned in section 32-F. does section 32-F apply at all, that is the

question. The word "landlord" itself has not been defined in the Tenancy Act. After defining the word "tenant" in section 2(18) the Act proceeds to say that the word "landlord" shall be construed accordingly. Section 2(18) says that the word "tenant" means a person who holds land on lease and includes a person who is deemed to be a tenant u/s 4 or person who is a protected tenant. The tenant, therefore must be a person holding the land which is the subject matter of the tenant belonging naturally to the landlord who also must be a person. Section 2(11) says that a person includes a joint family. The word "person" defined in the Tenancy Act is not exhaustive. It is an inclusive definition and, therefore, reference to the definition of a person contained in the Bombay General Clauses Act, will not be inappropriate. The word "person" has been defined in this Act so as to include any company or association or body of individuals whether incorporated or not. In my opinion, tenants in company will be unless it is repugnant to the context a body of individuals not necessarily forming a joint family but forming a body of a tenants in commons. This body of persons can be characterised as a person who is a landlord within the meaning of section 32-F of the Tenancy Act. If each one of them is under one or the other disability mentioned in section 32-F then it can be said that the provisions of section 32-F will apply. If, however, any one of them ceases to be under the disability then the tenant will be entitled to exercise the right of purchase as mentioned in Clause (a) of section 32-F (1). In my opinion the landlord, who is a body of persons all of whom are under one or the other disability mentioned in section 32-F as also in section 31(3) of the Tenancy Act, ceases to be a disabled landlord when one of them ceases to be under disability. When such things happens, subject to the provisions of section 32-F, the tenant of such body of landlords will be entitled to purchase the land. This interpretation accords well with the intention of the legislature expressed in relation to a body of persons constituting a joint family. There is no reason why the same principle cannot be applied in case of a body of persons constituting owners in common. I am, therefore, inclined to confirm the order of the courts below though on different grounds.

7. In the result, the petition fails and the rule is discharged with costs.