IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 209 OF 1999
AND
CIVIL APPLICATION NO.2733 OF 2014

Shri. Pandu Gopal Dange,
since deceased by Lrs.
Dattu P. Dange, since deceased
by Lrs.
Smt. Sugandha D. Dange and ors. .. Petitioners
vs.
Smt. Janabai @ Laxmibai Hari
Kulkarni, since deceased by Lrs.
Vasant H. Kulkarni & ors. .. Respondents

Mr. Tejpal Ingale for the Petitioners & Applicants.
Mr. S.V. Sadavarte for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 16 January 2015.
Date of Pronouncing the Judgment: 23 January 2015.

JUDGMENT :-

1] Civil Application No. 2733 of 2014 for bringing on record the legal heirs of deceased petitioner No.2a is allowed. Amendment to be carried out forthwith. Mr. Tejpal Ingale appears for the petitioners, including the legal heirs now brought on record.

2] This petition, is directed against the judgment and order dated 30 December 1988, made by the Tenancy Awal Karkun, Shirala and orders dated 28 February 1991 and 26 November 1998 made by the learned Assistant Collector Collector Walwa and Maharashtra Revenue Tribunal, Kolhapur (MRT) respectively, confirming the

same. All the three orders have declared that the petitioner's agricultural tenancy in respect of the suit property stands terminated and directions have been issued to hand over possession of half portion of the suit land to the respondents.

3] The brief facts, in which such challenge arises is that from some time prior to the year 1948, the petitioner or their predecessors-in-title claim tenancy and possession in respect of the suit properties, of which the original landlady was Smt. Anandibai Hasabnis (Anandibai). In 1957, said Anandibai instituted Tenancy Case No. 337 of 1957 under Section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 (said Act) against the petitioners (their predecessors-in-title) seeking to resume possession on grounds of bona fide requirement for personal cultivation before the Court of Tenancy Mahalkari of Shirala. By order dated 14 August 1957, Andibai's plea was allowed and possession was directed to be restored to her. The petitioners (or their predecessors-in-title) instituted Tenancy Appeal No.235 of 1957 before the SDO (Appeal Court) impugned the order dated 14 August 1957. By judgment and order dated 21 April 1958, such appeal was allowed and the order dated 14 August 1957 for restoration of possession was set aside.

4] On 2 December 1966, Anandibai died leaving behind a Will dated 12 April 1966 bequeathing, *inter alia*, the suit property in favour of Smt. Janabai Kulkarni (respondent therein). On 28 November 1967, i.e., before a term of one year would expire from the date of demise of Anandibai, Janabai Kulkarni filed Application No.6 of 1967, which was renumbered as Tenancy Case No. 25 of

1978 before Tenancy Awal Karkun for resumption for possession under Section 31 (3) read with 29 of the said Act, again for bona fide and personal cultivation.

5] The petitioners resisted the aforesaid application for resumption *inter alia,* by objecting to maintainability of such application, as also by raising disputes with regard to the Will dated 12 April 1966 and the rights derived by Janabai on the basis thereof. The dispute with regard to the Will was referred by the Awal Karkun to the Civil Court for determination. The Civil Court by its decision dated 27 July 1972 declared that Janabai was the sole legal heir of late Anandibai in respect of the suit properties in terms of Will dated 12 April 1966.

6] Thereafter, the Awal Karkun, Shirala, by judgment and order dated 30 December 1988 allowed Janabai's application for resumption, holding that the petitioners tenancy in respect of the suit properties stands terminated and further directed the petitioners to hand over possession of half portion of the suit property to the respondents. The petitioners' appeal and consequent revision against the judgment and order dated 30 December 1988 were dismissed by the Appeal Court and MRT on 28 February 1991 and 26 November 1998 respectively. Hence, present petition.

7] Mr. Tejpal Ingale, learned counsel for the petitioners, upon adverting to the provisions contained in Sections 29, 31 and 32 of the said Act submitted that the respondents (or their predecessor-in-title), i.e., Anandibai, having made application for resumption of

property under Section 31 read with Section 29 of the said Act, and the same having failed, the petitioners, automatically became the deemed purchasers in respect of the suit properties. No application, therefore, at the behest of Janabai, who claims through Anandibai, was at all maintainable. In this regard, learned counsel for the petitioners placed reliance upon the decision of the Division Bench of this Court in case of *Nago D. Mahajan vs. Smt. Yeshodabai Mahajan*[1], and *Vijay K. Deshpande vs. Guru Siddha sidram Mhatre (since deceased by his legal heirs)*[2].

8] Mr. S.V. Sadavarte, learned counsel for Respondent Nos.1 to 3, defended the impugned orders by submitting that there was no reason to interfere with concurrent finding of fact recorded therein. Mr. Sadavarte pointed out that this was not a case where Anandibai had herself are applied for resumption of possession, consequent upon the dismissal of her first application by the Appeal Court on 21 April 1958. Rather, this was a case where Janabai, consequent upon the demise of Anandibai and in her capacity as sole legal heir had applied for resumption in view of the provisions contained in Section 31 (3) of the said Act, because admittedly, on Tillers' day, i.e., 1 April 1957, Anandibai was a widow and consequently a disabled landlord for purposes of Section 31 (3) of the said Act. The learned counsel placed reliance upon the decisions of the Full Bench of this Court in case of *Bai Jiviben v. Bombay Revenue Tribunal*[3] and of Gujarat High Court in case of *Patel Nagji Madhu & ors. vs. Bai Rajubai Heirs of deceased Masubai Vajsur & anr.*[4].

1 1978 BLR 427
2 2003(2) Mh.L.J. 81
3 1959 (61) BLR 1475
4 1985 (2) GLR 875

9] The rival contentions, now fall for my determination.

10] As noted earlier, there is no dispute whatsoever in so far as the facts are concerned. Anandibai, the predecessor-in-title of the respondents, had indeed instituted proceedings for resumption of the suit properties under Section 31 read with Section 29 of the said Act for bona fide and personal cultivation. Although, such proceedings were allowed by the first authority by order dated 14 August 1957. The said order was set aside and the proceedings dismissed by the Appeal Court by order dated 21 April 1958.

11] The case of the petitioners that consequent upon the dismissal of Anandibai's application for resumption of possession under Section 31 read with Section 29 of the said Act, by order dated 21 April 1958, the petitioners (or their predecessors-in-title) automatically became '*deemed purchasers*' of the suit properties does finds sustenance in the provisions contained in Section 32 (1) of the said Act, which read thus:

> *32. Tenants deemed to have purchased land on tillers' day. - (1) On the first day of April 1957 (hereinafter referred to as "the tillers day") every tenant shall, (subject to the other provisions of this section and the provisions of) the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if -*
>
> *(a) Such tenant is a permanent tenant thereof and cultivates land personally :*
>
> *(b) Such tenant is not a permanent tenant but cultivates the land leased personally ; and*
>
> *(i) the landlord has not given notice of termination of his tenancy under section 31 ; or*

> *(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the land ;*
> *(iii) the landlord has not terminated this tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to (the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the lands:)*
>
> ***Provided that if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the (Maharashtra Revenue Tribunal) under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date".***
>
> ***(emphasis supplied)***

12] Section 32 (1) provides that on 1 April 1957 (Tillers' day) every tenant shall subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as a tenant; if such tenant is a permanent tenant thereof and cultivating the land personally; such tenant is not a permanent tenant, but cultivating the land leased personally; and the landlord has not given any notice of his termination under Section 31 ; or notice has been given under Section 31, but the landlord has not applied to the Mamlatdar on or before the 31 March 1957 under Section 29 for obtaining possession of the land; or the landlord has not terminated the tenancy on any of the grounds specified in Section 14 or so terminated the tenancy but

has not applied to the Mamlatdar on or about 31 March 1957 under Section 29 for obtaining the possession of the land.

13] The proviso to Section 31 (2) of the said Act, with which we are directly concerned in the present case provides that if an application made by the landlord under Section 29 of the said Act for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or any revision by the MRT under the provisions of the said Act, then the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. Such date, on which the final order of rejection is passed is to be referred to as '*postponed date*'.

14] In the present case, as noted earlier, the landlord Anandibai had made an application under Section 29 of the said Act for obtaining possession of the land from the petitioners (or their predecessors-in-title) some time in the year 1957, being Tenancy Case No. 337 of 1957. Such application was finally rejected by the Appeal Court on 21 April 1958. Applying the proviso to Section 32(1) of the said Act, therefore, the petitioners (or their predecessors-in-title), who are admittedly the tenants of the suit properties, can be deemed to have purchased the suit properties on the date on which the final rejection order was passed, which in the present case would be 21 April 1958. In this case, '*the postponed date*' *qua* the petitioners (or their predecessors-in-title) would be 21 April 1958, on which date the petitioners (or their predecessors-in-title) became deemed purchasers in respect of the tenanted suit properties.

15] The learned counsel for the respondents did try to make out a case that the petitioners (or their predecessor-in-title), were not the permanent tenants in respect of the suit property. There is no basis for any such contention. The proceedings instituted by Anandibai, who was admittedly predecessor-in-title of the respondents did not assert so. There is no material on record to sustain such a plea. In any case, if the provisions of Section 32 (1) (b) are taken into consideration, then even a tenant who may not be a permanent tenant, but cultivates the land leased personally becomes a deemed purchaser on the Tillers' day, provided the contingencies prescribed under sub-clause (i), (ii) and (iii) stand fulfilled. In the present case, there is no material placed on record to suggest that such contingencies were not fulfilled. That apart, there is no reason to go into the aspect of whether the petitioners (or their predecessors-in-title) were permanent tenants or not, in view of applicability of the proviso to Section 32(1) of the said Act. The proviso, places beyond the pale of controversy the position that where a landlord makes an application under Section 29 of the said Act for resumption of possession and the same is rejected, then the tenant shall be deemed to have purchased the land on the date of final order of rejection, which date shall be referred to, as '*postponed date*'. Such view draws support from clause 2(18) of the said Act, which defines tenant to mean a person, who holds land on lease and includes not merely a person who is a permanent tenant but also a person who is a deemed tenant under Section 4 or a person who is a protected tenant. However, as noted earlier, there is no reason to dilate on this issue, as there is no basis for the plea that the petitioners (or their predecessors-in-title) were not permanent tenants in respect of the

suit property. In light of application for resumption made by Anandibai in the year 1957, it was for the respondents to place the material on record in support of the plea that the petitioners (or their predecessors-in-title)were not permanent tenants. There is no serious dispute that the petitioners (or their predecessors-in-title) have been tenants, lawfully cultivating the suit properties from prior to the year 1948.

16] It is settled position in law that once the tenant becomes a deemed purchaser under the said Act, such vesting is complete and indefeasible. The title of the landlord to the lands in question passes immediately to the tenant on the Tillers' day and there is a complete purchase or sale thereof as between the landlord and tenant.[5] Therefore, further application by Janabai, claiming through Anandibai, was clearly not maintainable. Inasmuch as this jurisdictional aspect has been ignored, the impugned orders deserve to be set aside.

17] In almost identical circumstances, this Court in case of *Vijay Deshpande (supra),* has held that where a widow, prior to the Tillers' day, i.e., before 1 April 1957 opted, despite her disability, to apply for resumption of possession under Section 31 read with Section 29 of the said Act, and such application was either withdrawn or dismissed, the successor or legal representatives of such widow, would not be entitled to maintain an application under Section 31(3) or for that matter Section 32 -F(1)(a) of the said Act, in order to once again seek resumption of possession of the tenanted lands.

5 Shri Ram Ram Narain Medhi vs. State of Bombay – AIR 1959 SC 459

In paragraph 4, this Court observed thus:-

> *"4. In the present case, however, it is clear that Radhabai had filed an application 25-3-1957 to get possession of the land under section 31 of the Bombay Tenancy and Agricultural Lands Act and this application was withdrawn on 21-6-1958. In such a situation it is settled law that the conferment of the right to purchase would be postponed only till the termination of the application vide (Nago Dattu Mahajan v. Smt. Yeshodabai Huna Mahajan) reported in 78 Bombay Law Reporter 427. In that case the facts of the case were similar to the present case. The landlady who was the widow had applied for possession of the land for personal cultivation before 31-3-1957 under Section 31 r/w. Section 29 of the Act. The application was rejected on 26-12-1958. The Division Bench held that if the right to terminate tenancy and seek possession is exhausted by the landlord, the landlord cannot avail of Section 31(3) in spite of being disabled landlord. As a result Section 32-F(1)(a) is also inapplicable. The Division Bench has observed as follows : "Such landlords thus have a choice to avail of either of these two provisions for resumption, i.e. Section 31(1) or Section 31(3), exercise of which depending on the circumstances in which each of them finds himself. No landlord, however, can avail of both the provisions, Section 31 having been designed to afford only one last opportunity of resumption. Any such landlord thus cannot seek resumption under Section 31(3) again if he or she has availed of the right under Section 31(1). Section 32-F(1)(a) being merely corollary and counterpart of Section 31(3) its application also would depend on such landlords choice and competency to avail of the provisions of Section 31(3). Consequently its provision cannot be attracted when the right to resume under Section 31(1) is availed of and one such opportunity is exhausted by such disabled landlord. Section 32-F(1)(a) cannot be attracted indiscriminately merely because tenants landlord happens to be a disabled landlord, i.e., a minor, widow, etc., as specified in these two Sections. Section 32-F(1)(a) thus will not be attracted, when the widow or any other such disabled landlord seeks resumption under Section 31(1) before March 31, 1957, without regard to whether he or*

> *she fails or succeeds in the attempt. It will not apply even if such an application for resumption is rejected. Due to exhaustion of such right, the landlord cannot avail of Section 31(3) in spite of being a disabled landlord. In application of Section 31(3) results in inapplication of Section 32-F(1)(a) also. Like the tenants of every other landlord applying under Section 31(1), the tenant of such a landlord also would become an automatic purchaser of the lands on the date of final rejection of such application, as under the first proviso to Section 32(1)(b).*"

18] In case of *Nago Dattu Mahajan (supra),* the Division Bench of this Court after considering the well-knit scheme contained in Sections 31(1), 32 and 32F of the said Act, has held that disabled landlords, i.e., widows, minors etc. have a choice to avail either of two provisions for resumption namely Section 31 (1) or 31 (3), exercise of which depends on circumstances in which each of them finds himself. However, no landlord can avail of both provisions since Section 31 was designed to afford only one last opportunity of resumption. Any such landlord cannot seek resumption under Section 31 (3) again if he or she availed right under Section 31 (1) and Section 32F (1)(a) being merely corollary counterpart of Section 31 (3) its application would also depend on such landlord's choice and competency to avail the provisions of Section 31 (3). Consequently, its provisions cannot be attracted if right to resume under Section 31 (1) is availed of and one such opportunity is exhausted by such disabled landlord. Section 32F(1)(a) cannot be attracted indiscriminately, merely because the tenant's landlord happens to be a disabled landlord, that is, a minor or a widow as specified in these two sections. Section 32 F(1)(a) will not be attracted when the widow or any such disabled landlord seeks resumption under Section 31(1) before 31 March 1957, without

regard to whether he or she fails or succeeds in the attempt. It will not apply even if such an application for resumption is rejected. Due to exhaustion of such right, the landlord cannot avail of Section 31 (3) in spite of being a disabled landlord. Inapplication of Section 31 (3) results in inapplication of Section 32F(1)(a) also. Like tenants of every other landlord applying under Section 31(1), the tenant of such a landlord also would become an automatic purchaser of the lands on the date of final rejection of such application, as under the first proviso to Section 32 (1)(b). The contemplated postponement of the tenant's right of purchase under Section 32F(1)(a) is entirely based on the hypothesis that the landlord has not availed of such right under Section 31 (1) and the right to resume still subsists even after the tillers' day, that is 1 April 1957. Where the widow or other disabled landlord contemplated under Section 31(3), avails herself or himself of the right of resumption by recourse to Section 31(1), she or he ceases to be so entitled to claim the resumption thereafter, without regard to whether such application results in resumption or not.

19] The aforesaid two decisions of this Court, afford complete answer to the submissions of Mr. Sadavarte for respondent Nos.1 to 3. In case of *Nago D Mahajan (supra)*, it has been held that even where a disabled landlord makes application for resumption of possession, then irrespective of success or failure of such application, no further application under Section 31 (3) read with Section 32F (1)(a) would be maintainable. In the present case, however, the case of the petitioners is on a stronger footing. This is because Smt. Anandibai, assuming that she was a disabled landlady, (since the

provisions contained in the proviso to Section 32F(1)(a) have not been considered by any of the Authorities) actually applied for resumption in the year 1957 and such application was finally rejected on 21 April 1958. Clearly, therefore, the application made by Janabai (respondent) on 28 November 1967, which is the foundation of the impugned orders, was not at all maintainable.

20] Mr. Sadavarte, learned counsel for respondent Nos.1 to 3 further relied upon the decision of the Full Bench of this Court in case of *Bai Jiviben (supra)*, in support of the submission that whether the legal heir of deceased widow, who was disabled landlord, can maintain an application for resumption of possession under Section 29 read with Section 31(3) of the said Act. A perusal of the said decision would however, indicate that the question involved in the said case was whether under Section 31 of the said Act, a widow can terminate the tenancy of her land and can apply for her possession under Section 29 of the said Act or whether such right is available only to successor-in-title of the widow under sub-section 3 of Section 31 of the said Act. The Full Bench of this Court ruled that the widow was competent to terminate tenancy of her land and apply for her possession under Section 29 of the said Act. Incidentally, this decision was specifically referred to by the Division Bench of this Court in case of *Nago D. Mahajan (supra),* and sustenance was drawn from the same to hold that a legal heir of a disabled landlord, cannot maintain an application for resumption of possession under Section 31 (3) of the said Act, once a disabled landlord, i.e., widow had herself made such an application and the

same came to be rejected. Thus the decision in case of *Bai Jiviben (supra),* rather supports the case of the petitioners.

21] Mr. Sadavarte, then placed reliance upon the decision of learned Single Judge of Gujarat High Court (A.M. Ahmadi, J., as His Lordship then was) in case of *Patel Nagji Madhu (supra)*. In the first place, the said decision, does not advert to the decision of the Division Bench of this Court in case of *Nago Dattu Mahajan (supra)*. Secondly, the issue involved in the said decision was whether right to evict a tenant conferred upon a widow by Section 31 (4)(b) of the said Act (as applicable to State of Gujarat) lapses on the death of the widow or is inheritable. Such issue really does not arise in the fact situation of the present case. Accordingly, even the said decision is clearly inapplicable.

22] There is no merit in the objection that this Court ought not to interfere with the concurrent findings of fact. In this case, there is no serious dispute with regard to findings of fact. The interference proposed, is also not by way of disturbing any findings of fact. Based upon admitted facts it is clear that the application dated 28 November 1967 made by Janabai seeking resumption of the tenanted property from the petitioners, was not at all maintainable, in view of rejection of similar application for resumption by Janabai's predecessor-in-title, i.e., Anandibai, by order dated 21 April 1958. The impugned orders, therefore, are in excess of jurisdiction and on that ground warrant interference.

23] In the result, the impugned orders are set aside. Rule is made absolute in terms of prayer clause (b). There shall be no order as to costs.

(M. S. SONAK, J.)