

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7476 OF 2015**

Vasudeo Dattu Holkar

..Petitioner

Vs.

**Damodhar Dhondiba Zambare (deced)
through LRs & Ors.**

..Respondents

Mr. Prathamesh Bhargude for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 10th AUGUST, 2015**

P.C.

1 There are concurrent orders passed by three authorities against the Petitioner and in favour of the Respondents herein who are the heirs of the original tenant. The question that arises in the background of the impugned orders is as to whether a fresh notice was required to be issued to the present Petitioner who is the successor of the landlord in respect of the lands in question.

2 The present proceedings have arisen out of the application made under Section 32G of the Bombay Tenancy and Agricultural Lands Act 1948 (for short the said Act), which application was allowed by the Tahsildar and Agricultural Land Tribunal (ALT) by order dated 20-1-2001. The Appeal filed by the Petitioner against the said order came to be dismissed by the Sub Divisional Officer (SDO) by order dated 29-8-2002. The Petitioner thereafter

carried the matter by way of a Revision before the Maharashtra Revenue Tribunal (MRT). The MRT in turn has dismissed the Revision Application and thereby confirmed the orders passed by the Tahsildar and ALT, SDO.

3 The land in question is the land bearing old Gat No.157 and New Gat No.76/1, totally admeasuring 4 Hectors & 90 Ares out of which, the land admeasuring 2 Hectors & 25 Ares to the East, is the bone of contention between the Petitioner landlord and the Respondents tenants. The predecessor of the Respondents Dhondiba Zambare was the recorded tenant of the land in question in respect of which Mutation Entry No.2638 was recorded on 21-7-1948. After the death of the said Dhondiba, his three sons have succeeded to the land in question. In so far as the landlord is concerned, one Sadhu B Holkar was the original landlord who expired on 3-1-1935 and he was succeeded by his heirs i.e. his two wives Parvatibai and Chandrabhaga, their names were accordingly mutated vide Mutation Entry No.1356. One of the wives of Sadhu Holkar i.e. Chandrabhaga adopted Dattu Sadhu Holkar on 17-2-1936 which was also mutated in the revenue record vide Mutation Entry No.1768 dated 31-2-1937. It seems that an inquiry under Section 32G came to be initiated at the behest of the heirs of the original tenant in the year 1964, but the said inquiry was kept in abeyance as Parvatibai Holkar was a widow and in terms of Section 32F, keeping of the proceedings in abeyance was mandated. The said fact was also recorded in the revenue record vide Mutation

Entry No.4358 in terms of which Section 32F was made applicable to the land in question. The heirs of the original tenant thereafter applied for recommencement of the proceedings on 7-1-1997 in which application, the name of the landlord was mentioned as Parvatibai Sadhu Holkar and it was further mentioned that it has come to the knowledge of the Applicants that the heir of the said Parvatibai Sadhu Holkar was not Krishna Mahadu Shinde but her grandson Vasudev Dattu Holkar alone. Accordingly an application was made on 18-1-1999 to join the said Vasudev Dattu Holkar i.e. the Petitioner herein as a party to the said proceedings. It appears that after the said Vasudev Dattu Holkar was joined to the proceedings, his statement came to be recorded wherein he has stated that he has nothing to do in the matter, in respect of which he filed a pursis. The Tahsildar and ALT framed an issue as to whether on 1-4-1997 i.e. the tillers day, the ancestor of the Applicants / Respondents was a protected tenant. The said issue was accordingly answered in favour of the Respondents as also the issue as to whether a fresh notice was required to be issued on the commencement of the proceedings after the death of the said Parvatibai Sadhu Hokar, which issue was answered by the ALT by holding that since the tenants had shown the intention to purchase their lands in question under Section 32G, no fresh notice was required to be issued and therefore the ALT impliedly held that there is a compliance of Section 32F(1A). The ALT accordingly by order dated 20-1-2001 fixed the purchase price of the land as being Rs.6502/-. As indicated above, the said order passed by the Tahsildar

and ALT was taken exception to by way of an Appeal, being Appeal No.3 of 2001 before the SDO. The SDO as his order discloses reiterated the findings of the Tahsildar and ALT and dismissed the said Appeal by order dated 29-8-2002

4 The Petitioner aggrieved by the said order dated 29-8-2002 carried the matter by way of a Revision Application before the MRT. The MRT did not deem it appropriate to interfere with the orders passed by the Tahsildar and ALT and SDO and accordingly dismissed the Revision Application. Before the MRT, the Petitioner sought to demonstrate the infirmity in the proceedings by contending that the notice as contemplated under Section 32F(1A) has not been issued to the Petitioner on the recommencement of the proceedings in the year 1997. The said contention raised on behalf of the Petitioner was rejected by the MRT by relying upon the Judgment of a Learned Single Judge of this Court in the matter of **Amrutrao Ratnakar Rajadhye Vs. Krishna Sakharam Patil**¹ and also the judgment of a Learned Single Judge of this Court in the matter of **Shrikrishna Subhana Horambale Vs. Shripad Jiwaji Apate**². On the application of the said judgments, the MRT held that there was no necessity to issue a fresh notice in view of the fact that the proceedings had already commenced in the year 1964 but were kept in abeyance. The MRT accordingly by the impugned order dated 22-5-2015 has dismissed the said Revision Application.

1 1997(3)MhLJ 783

2 AIR 1986 Bom 86

5 The Learned Counsel appearing on behalf of the Petitioner, Mr. Bhargude, would contend that when the landlord is under a disability, the compliance of Section 32F(1A) is mandatory. The Learned Counsel would contend that though the proceedings were initiated in the year 1964, the same would be of no avail as after the disability of the landlord came to an end, the tenant has to issue a notice in compliance with Section 32F(1A). In support of the said contention, the Learned Counsel sought to place reliance on the judgment of the Apex Court in the matter of **Tukaram Maruti Chavan Vs. Maruti Narayan Chavan (dead) by LRS & others.**³

6 In my view, having regard to the facts of the present case, the judgment of the Apex Court in Tukaram Chavan's Case (Supra), will have no application. In the instant case, as indicated above, the proceedings under Section 32G were commenced and were kept in abeyance in view of the disability of the landlord as the Landlady Parvatibai was a widow. It is required to be noted that the said fact as also the application of Section 32F was entered in the revenue record. In so far as the facts before the Apex Court are concerned, it is after the culmination of the 32G proceedings that the heirs of the landlord questioned the purchase price that was fixed and one of the grounds of challenge was that notice under Section 32F(1A) was not issued. Hence the facts before the Apex Court stand apart from the facts which were

3 (2008)9 Supreme Court Cases 358

before the authorities below in the instant case. As in the instant case, the proceedings had commenced and were kept in abeyance and revenue entry was also made to that effect. Ultimately, it is required to be borne in mind that the BTAL Act is a beneficial piece of legislation and an interpretation which tilts in favour of the tenant has to be adopted.

6 In my view, therefore, the concurrent orders passed by the three authorities below do not warrant the exercise of Writ Jurisdiction of this court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]