

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2221 OF 1997

Shri Pandharinath Pandurang Mate
deceased by his legal heirs

Shri Patil Pandharinath Mate & Ors. .. Petitioners

VS.

Smt. Radhabai Mahadeo Mate & Ors. .. Respondents

Mr. S. S. Kanetkar for Petitioners.

Mr. Dilip Bodake for Respondent No. 1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 16 January 2015

Date of Pronouncing the Judgment : 22 January 2015

JUDGMENT :-

1] This petition is directed against the order dated 13 November 1996 made by the Maharashtra Revenue Tribunal ("MRT"), Pune setting aside order dated 31 December 1992 made by the Assistant Collector, Pune and remanding the application made by the respondents herein under Section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948 ("said Act") for reconsideration.

2] The petitioners *inter alia* claim to be tenants in respect of property surveyed under No. 18 Pot Hissa No. 1/11 which admeasures 0.35 Ares, Khadakwasla, Pune ("suit property"). On 1 April 1972 proceedings were initiated by Ramchandra Pansare

under Sections 25 and 29 of the said Act for resumption of possession which was dismissed on 13 July 1962. Pansare preferred appeal no. 456 of 1972, which was dismissed by the SDO on 31 December 1972. The petitioners, thereupon initiated proceedings under Section 32G for the purchase of the suit property. The same were allowed by the Tahsildar by order dated 1 February 1979, by way of determination of purchase price. Consequent upon payment of purchase price, the petitioner was issued certificate dated 30 September 1980 under Section 32M of the said Act certifying that the petitioners shall be deemed to be purchasers of the land under Section 32M of the said Act.

3] After the period of almost seven years, respondent no. 1 herein made application under Section 32F of the said Act, which came to be numbered as tenancy case No. 12 of 1987 stating that the suit property in fact belong to Kasabai Tukaram Mate, who was a widow on tiller's day i.e. 1 April 1957. The said Kasabai expired on 24 December 1971 and respondent no. 1 Radhabai Mate, is her legal heir, of which there is a due note in the village records. Within two years from the death of Kasabai, the petitioners gave no intimation with regard to purchase of the suit property. Accordingly, the petitioners have lost right to purchase the suit property. Correspondingly right has accrued to Radhabai to resume possession over the suit land.

4] By order dated 9 May 1988, the Additional Tahsildar allowed tenancy case no. 12 of 1987 instituted by Radhabai. The appeal court by order dated 22 June 1989 however, set aside the order dated 9 May 1988 and remanded the matter to the Additional Tahsildar for reconsideration. Upon remand, the Additional Tahsildar, by order dated 30 September 1990 dismissed tenancy case no. 12 of 1987. This order was upheld by the Assistant Collector (appeal court) by order dated 31 December 1992. The MRT by impugned order dated 13 November 1996, however has set aside orders dated 31 December 1992, 30 September 1990 and once again remanded the matter for reconsideration to the Additional Tahsildar. Hence, the present petition.

5] Mr. S. S. Kanetkar, the learned counsel for the petitioners made the following submissions in support of the petition:

(A) The petitioners had obtained certificate of purchase as against landlord Pansare. The case of Radhabai basically is that Pansare was not a landlord in respect of the suit property, but one Kasabai (predecessor in title of Radhabai) was the landlady. If so, this was a civil dispute as between two persons claiming ownership and title to the suit property, which could never have formed the subject matter of an application under Section 32F of the said Act.

At the highest, it was for Radhabai to establish her title to the suit property qua Pansare by instituting a civil suit. If at all any issue of tenancy does arise in such a suit, then it is only such issue which could have been referred for adjudication to the authorities under the said Act. The authorities under the said Act lacked jurisdiction to independently determine issues of ownership and title, as between two landlords. For this reason, the very application dated 28 April 1987 made by Radhabai was not maintainable. The impugned order made therein was clearly without jurisdiction;

(B) Without prejudice, it was submitted that there is no material, on basis of which the MRT has held that Kasabai and not Pansare was the owner of the suit property. Further, there is no material to hold that Kasabai was a widow on tiller's day. In any case, there is material on record which establishes that the proviso to Section 32F was clearly attracted in the facts and circumstances of the case. There is material that name of predecessor in title of the petitioners was recorded as a protected tenant on 30 October 1948 vide mutation entry no. 1188, which entry has not been challenged till date. There is no material to establish the claim of partition in the family of Genu and Bhau. For all these reasons, the impugned order made by the MRT is vitiated by clear perversity and warrants interference.

6] Mr. Dilip Bodake, the learned counsel for respondent no. 1 defended the impugned order by submitting that all that the impugned order has done is to remand the case for fresh enquiry under Section 32F. Further, in order to set aside the certificate of purchase obtained by the petitioners under Section 32M of the said Act, respondent no. 1 had no other remedy than to make application under Section 32F of the said Act. The dispute raised by respondent no. 1 was not entertainable by the civil court, in view of the provisions contained in Section 85 of the said Act. The findings of the fact recorded in the impugned order are based upon the material available on record. Accordingly, this Court ought not to interfere with the impugned order in the exercise of its extraordinary jurisdiction.

7] The rival contentions now fall for my determination.

8] In the present case, to begin with, Pansare instituted proceedings against the petitioners or their predecessors in title, admitting them to be tenants, but seeking to resume possession under Sections 25 and 29 of the said Act. Consequent upon the dismissal upon such proceedings, the petitioners, some time in the year 1979, relying upon entries in revenue record made way back on 30 October 1948, applied for determination of purchase price

under Section 32G of the said Act. Such application was obviously made as against the landlord Pansare. By order dated 1 February 1979, the Additional Tahsildar allowed the petitioners proceedings under Section 32G and determined the purchase price. Upon payment of the purchase price, 32M certificate was issued in favour of the petitioners, which reads thus :

“CERTIFICATE

Certificate of purchase under Section 32-M of the Bombay Tenancy and Agricultural Lands Act, 1948.
*Whereas Shri Pandharinath Pandurang Mate is the tenant of the land specified **below belonging to the landlord Shri Ramchandra Bajaba Pansare** and whereas under the provisions of section 32-K of the Bombay Tenancy and Agricultural Lands Act, 1948, the tenant Shri Pandharinath Pandurang Mate was required to deposit and has deposited Rs.1146.37 (in words) One Thousand and One Hundred Forty Six and paise Thirty Seven only) price of the said land, it is hereby certified that the said tenant Shri Pandharinath Pandurang Mate shall be deemed to be the purchaser of the said land under the provisions of Sec. 32-M of the said Act.*

Description of the land							
District	Taluka	Village	Survey No.	Pot Hissa No.	Area	Asses-ment	Boun-dries
Pune	Haveli	Khadak-wasla	18	1 / 2		H-R 0.17	0.39
			18	1/ 5		0.27	0.56
			25	3		0.08	0.62
			25	28		0.10	0.62
			18	1/11		0.34	2.81

No. ALT/Khadakwasla/124/79
Date: 30.9.80
Agricultural Lands Tribunal
& sd/- x x x
Tahasildar & ALT Haveli”

9] From the aforesaid, it is clear that the petitioners had claimed to be tenants of Pansare and the certificate of purchase under Section 32M of the said Act, issued by the Tahsildar is also qua the landlord Pansare. In the proceedings instituted by the petitioners or in the certificate issued by the Tahsildar on 30 September 1980, there is no reference to any of the respondents. It is also the case of the petitioners that the revenue records indicate the names of the petitioners as being the tenants of the suit property, of which the landlord is Pansare.

10] The perusal of application dated 28 April 1987, which is the foundation of the impugned order would indicate that the same is very sketch and bereft of any material particulars. In any case, the application though styled as one made under Section 32F of the said Act, merely asserts that Kasabai was the landlady in respect of the suit property and not Pansare. The application further asserts that Kasabai, through whom the respondent Radhabai claims, was a widow on the tiller's day and since the petitioners failed to give any intimation of purchase within two years from the date of demise of Kasabai i.e. on 24 December 1971, the petitioners have lost their right to purchase the suit property and consequently the suit property is required to be restored to the respondent Radhabai. There is no material produced in support of such sketchy

averments in the application dated 28 April 1987. That apart, the real question which arises is whether the dispute as to whether ownership and title to the suit property, could at all have been raised in an application under Section 32F of the said Act, and if raised, whether the authorities under the said Act would have jurisdiction to decide the same. From the perusal of application dated 28 April 1987, it is apparent that the fundamental plea is that Kasabai was the landlady of the suit property and not Pansare, clearly therefore this is a dispute of title as between two persons claiming title and ownership to the suit property.

11] Section 85 of the said Act provides that no civil court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him which he is by or under the said Act required to be settled, decided or dealt with by the authorities under the Act. Further, no order made by the authorities under this Act shall be questioned in any civil or criminal courts. Further Section 85A of the said Act provides that if any suit instituted in any civil court involves any issues which are required to be settled, decided or dealt with by any authority under this Act, a civil court shall stay the suit and refer such issues to the authorities

for determination. On receipt of such reference from the civil court, the authorities shall deal with and decide such issues in accordance with the provisions of the said Act and shall communicate the decision to the civil court and the civil court shall thereupon dispose of the suit in accordance with the procedure applicable thereto. Thus, issues as to whether a person is or was at any time in the past a tenant and whether such tenant is or should be deemed to have purchased from his landlord the land held by him, is one of the issues, which is required to be settled, decided or dealt with by the authorities under the said Act. However, there is nothing in the provisions contained in the said Act, which require a dispute simplicitor between two persons claiming ownership in respect of a land, even where such land may be tenanted, be settled, decided or dealt with by the authorities under the said Act. Such a dispute would essentially be a civil dispute as to decide the title of the two persons to the suit land. Such a dispute shall have to be necessarily decided by the civil courts in accordance with the procedure applicable thereto. Such a suit will not be barred under Section 85 of the said Act. In such a suit, if any issue arises which is required to be settled, decided or dealt with by the authorities under the said Act, then as is provided under Section 85A of the said Act, such issue may have to be referred to the competent authority under the said Act.

12] There is no merit in the contention of Mr. Bodake that the suit of the aforesaid nature would be barred under Section 85 of the said Act or that any decree which the respondent may obtain in such a suit would remain only a paper decree. It needs to be emphasized that in the present case the petitioners has obtained Section 32M certificate not as against respondent Radhabai or her predecessor in title but rather Section 32M certificate has been obtained qua the landlord Pansare. If indeed, respondent Radhabai is right in her contention that Pansare had no rights of whatsoever nature qua the suit property, of which Radhabai or her predecessor in title were the owners, then certificate under Section 32M of the said Act qua landlord Pansare, would not bind Radhabai. However, the issue of ownership shall have to be determined before a competent forum, which would be the civil court and not the authorities under the said Act. Incidentally, to the application dated 28 April 1987 made by Radhabai, Pansare was not even impleaded as a party. Determination as to whether Kasabai (predecessor in title of Radhabai) was the landlady of the suit property and Pansare was not a landlord, could never have been determined in proceedings, to which Pansare was not even impleaded as a party respondent. The MRT has completely glossed over this aspect of the matter.

13] The impugned order made by the MRT is deficient for other reasons as well. Admittedly, no evidence was led before the Tahsildar with regard to application dated 28 April 1987. There is no material to establish the ownership of Kasabai qua the ownership of Pansare. As held earlier, such civil dispute of title as between two persons could not even have been gone into by the authorities under the said Act in the first instance. Issues of title could also not have been decided merely on the basis of some revenue entries, which again are by no means clear. The Tahsildar and the appeal court were right in dismissing Radhabai's application dated 28 April 1987. The MRT, without advert to the material or rather the lack thereof on record, could not have granted Radhabai's application dated 28 April 1987. The impugned order does not merely remand the said application for reconsideration, the impugned order in fact allows Radhabai's application under Section 32F for possession. The matter was remanded to the Tahsildar for conducting independent enquiry under Section 32P for possession of the land. All this is clearly in excess of jurisdiction.

14] There is yet another circumstance which warrants interference with the impugned order, even assuming that application under Section 32F, was, in the facts and circumstances

of the present case maintainable. The proviso to Section 32F(1)(a) provides that where a person of such category i.e. the minor, widow or a person subject to any mental or physical disability, is a member of a joint family, then the provisions of Section 32F(1)(a) will 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, unless the share of said person in a joint family has been separated by metes and bounds and the Mamlatdar on an enquiry 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 appeal court, in its judgment and order dated 31 December 1992 has held that apart from the widow Kasabai, the joint family comprised of her three brothers -in-law as well. There is absolutely no material brought on record to suggest that the three brothers-in-law were also disabled landlords or that there was a separation of the property by metes and bounds. In such circumstances, the proviso to Section 32F(1)(a) could never have been ignored.

15] The findings recorded by the MRT in the impugned order are vitiated by perversity being contrary to the weight of material on

record. In any case the findings are in proceedings, which itself were without jurisdiction. For all these reasons, the impugned order is liable to be set aside and is hereby set aside.

16] However, it is made clear that the observations in this judgment and order or for that matter, in the orders made by Tahsildar and appeal court, shall not come in the way of respondent Radhabai independently establishing her right and title to the suit property before a civil court, if she is so advised and inclined. Radhabai's application dated 28 April 1987 was not maintainable and consequently the orders made therein are without jurisdiction. The observations with regard to perversity of findings, are not intended to prejudice or conclude Radhabai's right, if any, to the suit property qua Pansare, or any other person.

17] Subject to the aforesaid, this petition is allowed and the impugned judgment and order dated 13 November 1996 made by the MRT is quashed and set aside. Rule is made absolute in terms of prayer clause (B) of the petition. In the facts and circumstances of the case there shall be no order as to costs.

Chandka

(M. S. SONAK, J.)