IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 808 OF 1983

Mahadu Bhau Mane
Since deceased by his legal heirs
Sambhaji Mahadu Mane & ors. ... Petitioners

vs.

Smt. Tulsabai Gunda Patil
Since deceased by his legal heirs
Shri. Shankar Gunda Patil
Since deceased by his legal heirs
Shri. Raju Shankar Patil & ors. ... Respondents

Mr. S. G. Karandikar a/w Mr. J. M. Joshi, Advocate for the petitioners.

None for the respondent.

Coram : Smt. R. P. SondurBaldota, J.
Date : 9th August, 2016

P.C. :

1. The subject matter of this petition is the purchase by the tenant of the agricultural lands at Survey No.84/12, 85/20, 84/24, 85/5 and 199/3 (now blocks no. 1099, 307, 314 and 326) of village Aitawade Khurd. The joint family of one Gundu Patil was the owner of the lands. He had, on 8th January, 1982 obtained certificate under Section 88C of the Maharashtra Tenancy and Agricultural Lands Act ('the Tenancy Act', for

short) for exemption from application of Sections 32 to 32R. He then filed proceedings under Section 33B read with Section 29 of the Tenancy Act for termination of tenancy of the original petitioner and for possession of the tenanted land. Gunda died on 28th March, 1962 leaving the respondents as the heirs. They however took no steps to bring themselves on record. Consequently, the proceedings filed by Gunda abated. But the abatement came to be recorded only on 21st May, 1965. The respondents who are the heirs of Gunda did not make any application for setting aside the abatement and revival of the application.

2. On 18th May, 1966 Mutation Entry No. 9062 was effected based on the information given by the heirs and on the orders of heirship enquiry by Tahsildar, Walva showing each of the respondents succeeding to the ¼ share in all the properties of Gunda. The Revenue records since then shows the respondents as joint holders of the properties. After abatement of the proceedings under Section 33B, the application under Section 32G by the original petitioner was refixed before the Additional Tahsildar and ALT, Walva. The respondents appeared before the Tahsildar to contest the proceedings. The Tahsildar by his order dated 15th February, 1970 partly allowed the application granting purchase of 0-12-0 Annas share in the lands in question. In the order, as the findings on the preliminary issues, the Tahsildar held that, as regards the

properties in question, the Tillers day stood postponed to 21st May, 1965. Out of the four heirs of Gunda his widow Tulsabai was held to fall under the exempted categories on the postponed Tillers day on account of her widowhood. It was held that the original petitioner did not hold tenancy in respect of any other land and that he was the lawful tenant entitled to the right of purchase in respect of the land in question. He was also willing to purchase the land. With these findings on the preliminary issues, the Tahsildar moved to the "trial issues" for fixing up the purchase price in respect of the land in question. He held that the tenant is entitled to the right of purchase under Section 32G in respect of 12 Anna share belonging to three of the heirs i.e. the children of Gunda and fixed purchase price in respect of 12 Anna share to be paid in six installments. This order was however set aside by the Sub-divisional Officer, Walva Division, Sangli by his order dated 30th January, 1971 passed in Appeal No. 59 of 1970 and the matter remanded for retrial.

3. After the remand, further evidence was recorded and the Tahsildar by his order dated 28th August, 1978 held that Mutation Entry No. 9062 was not binding on the respondents and that respondents no.2 to 4 had relinquished their right, title and interest in the land in question in favour of respondent no.1, the widow. Consequently, the Tillers day got further postponed under Section 32-F(1) of the Tenancy Act. The original petitioner challenged the order before the Sub-divisional Officer, Walva

Division by preferring Tenancy Appeal No. 2 of 1979. The appeal was dismissed by the order dated 28th July, 1980. Then he approached the Maharashtra Revenue Tribunal by way of a revision application which was also dismissed on 5th April, 1982 upholding the findings of the authorities below.

4. Mr. Karandikar, the learned advocate for the petitioners submits that there is no dispute as regards the status of the petitioners as the protected tenants in respect of the lands in question. There is also no dispute that they are desirous of purchasing the same. That purchase is however not allowed to be effected with the finding that the respondents no.2 to 4 have relinquished their right, title and share in the property in favour of their mother, respondent no.1 and that respondent no.1 being the widow, the Tillers day got further postponed. According to Mr. Karandikar, the material on record does not establish that respondents no.2 to 4 had relinquished their share in favour of respondent no.1. His second argument is that there cannot be second postponement of the Tillers day. Therefore, in any case the petitioners are entitled to exercise their right of purchase of the tenanted land.

5. In his order after remand the Tahsildar has disbelieved the Mutation Entry No. 9062 dated 18th May, 1966 because he found it to be suspicious. He observed that there were two certified copies of the mutation entry produced one dated 25th October, 1969 and the other dated 23rd July, 1978 and

there are discrepancies in them. He however does not describe the nature of discrepancies. The second reason stated is that no record in respect of Mutation Entry No. 9062 is available in the village record. It was contended by the respondents before the Tahsildar that the heirship enquiry was conducted behind their back and in the enquiry, relinquishment by respondents no.2 to 4 in favour of respondent no.1 was not considered. The SDO while considering the appeal, relied upon decision of this Court in ***Hirabai w/o Harji Ingale vs. Baba Haria Ingale*** *reported in* ***MLJ 1980 page 494*** to accept the claim of oral relinquishment and the consequent effect of respondent no.1 widow becoming the sole owner of the entire property. She being the widow on the postponed Tillers day, there was further postponement. The Tribunal upheld order of SDO with additional observation that with all the legal heirs coming before the authorities and stating the fact of relinquishment of rights in favour of respondent no.1 was sufficient to hold that there was a valid transfer of their interest or valid relinquishment of their right, title and interest in the property, to respondent no.1.

6. Mr. Karandikar argues that the case of relinquishment of their rights by respondents no.2 to 4 was a false case put up for the first time before the Tahsildar in the proceedings under Section 32G of the Tenancy Act in order to deprive the petitioners of their right of purchase. He points out that there was no attempt made by the respondents at any point

of time to get the alleged relinquishment in the revenue records, in fact, the revenue record states otherwise. The respondents did not even get this record corrected. Merely because the original record of enquiry was not traced at the time of the hearing of the application after remand, there can be no inference drawn under Section 35 and 114 of the Evidence Act that fraud was played in respect of Mutation Entry No. 9062. The entries presumed to be correct in law.

7. I find substance in the submission of Mr. Karandikar. It is to be noted that the respondents have not stated anywhere the requisite details of relinquishment. Neither the date nor the time nor the place of relinquishment is either stated or proved. The Tahsildar in his first order correctly noted that the heirs had applied to the Mamlatdar on 16th May, 1966 and on that basis Mutation Entry No. 9062 was effected. There is no document of relinquishment prepared by respondents no.2 to 4. There was a specific suggestion given in cross-examination of the witness of the respondents that the family had received rent from the tenant. Respondent no.1 had also examined herself in the proceedings. Though she reiterated the claim of relinquishment in her favour, she was unable to state any particulars of the fact of relinquishment. A bald statement made in the deposition by the witnesses cannot be accepted as true in the circumstances of the case. The strange reasoning given by the SDO and the Tribunal in their respective orders as regards the claim of

relinquishment on the part of respondents no.2 to 4 is that no person would make a claim which is prejudicial to his own interest. In my opinion, this observation is wholly misplaced. The authorities apparently did not realize that the claim made is not only not prejudicial to the parties but is to their advantage. It is an attempt on their part to prevent the sale of the land to the protected tenant. Since respondent no.1 failed to establish the fact of relinquishment, she does not taken into consideration the advantage must be held to be entitled to only ¼th share in the property left by Gunda.

8. Mr. Karandikar by placing reliance upon the decision of the Division Bench of this Court in ***Harshvardhan Shrinivas Potnis vs. Mahadu Pundalik Gangurde*** reported in ***1980 AIR (Bom) 198,*** secondly submits that there could not have been second postponement of the Tiller's day. By the decision cited, it is held that the person claiming benefit of Section 31(3) of the Tenancy Act should be the disabled landlord on 31st December, 1956 and 31st March, 1957. This would mean that any disability incurred subsequently cannot entitle the landlord benefit of Section 31(3) of the Tenancy Act.

9. For the above reasons, the rule is made absolute and the petition is allowed in terms of prayers clause (a) and (b).

[Smt. R. P. SondurBaldota, J.]