

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4589 OF 1998

Shri. Ishwara Kalu Gavada
the heir of deceased Shri Kalu V. Gavada .. Petitioner
vs.
Shri. Ramabhau B Patil .. Respondent

Mr. G.N. Salunke for the Petitioner.
None for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 06 MAY 2016.

P.C. :-

1] The challenge in this petition is to the orders dated 24 December 1982, 20 October 1991 and 26 February 1998 made by the Agricultural Lands Tribunal (ALT), Sub-Divisional Officer (SDO) and Maharashtra Revenue Tribunal (MRT) holding that the petitioner's right to purchase the suit property under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) has been rendered ineffective on account of failure on the part of the petitioner to comply with the mandatory provisions contained in Section 32F of the said Act.

2] Mr. Salunke, learned counsel appearing for the petitioner, submitted that at least at the appellate stage, the petitioner had raised the contention that the suit property was an Inaam category

land, which has not been re-granted to the holders and therefore, the respondent could not even claim to be the landlord in respect of the suit property. Further, the suit property was never partitioned amongst the family members of the respondent-landlord by metes and bounds, and in these circumstances, it could not have been said that Mr. Rambhau B. Patil was the sole landlord in respect of the suit property, who was under disability, on account of his minority.

3] Mr. Salunke submitted that in terms of proviso to Section 32F(1) of the Tenancy Act where a person of disability category referred to in sub-clause (a) is a member of joint family, then the provisions of sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in sub-sections unless before the 31st day of March 1958, the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on 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 proportionate that the share of such person in the entire joint family property and not the larger proportion.

4] Relying upon the decision in case of *Amrit B. Kale and ors. Vs. Kashinath J. Trade and anr. - (1983) 3 SCC 437*, Mr. Salunke submitted that the orders made by the authorities under the Tenancy Act on the basis of misconception that the provisions of Section 32F of Tenancy Act were applicable, when in fact, the matter was covered under the provisions contained in Section 32G of the Tenancy Act, are nullities and that such plea of nullity can be set up even in collateral proceedings.

5] The respondent, though served is neither present nor represented.

6] In this case, there is no dispute that Ramabhau B. Patil born on 22 March 1947, was a minor on the tillers' day , i.e. 1 April 1957. In fact, enquiry, under Section 32G was initiated in the year 1962, but the same was postponed by the order dated 29 April 1962 on the ground that the said landlord was a minor on the tillers' day.

7] The petitioner-original tenant, who claimed tenancy was informed about his right of purchase within two years from 17 October 1969 as required by the Amendment of Section 32-F(1A) of

the Tenancy Act. This was by means of intimation dated 10 February 1970 by the ALT No.1, Chandgad. The petitioner-tenant, however, neither exercised his right of purchase within a period of two years from the landlord's attaining majority, i.e., on 22 March 1965 nor did the petitioner exercise his rights within a period of two years from the date of aforesaid intimation dated 10 February 1970. This position is well borne from the material on record and therefore, it cannot be seriously disputed.

8] In 1978, the ALT commenced proceedings, in the matter of purchase of tenanted properties in the area. By order dated 31 May 1978, however, further enquiries in relation to the suit properties were dropped, upon noticing that the petitioner had failed to exercise his right to purchase within the periods specified under the Tenancy Act. Restoration of possession of the suit property was directed to the landlord.

9] The petitioner appealed against the order dated 31 May 1978 to the SDO. However, the SDO by order dated 31 March 1979 dismissed the said appeal on the ground that the same was barred by law of limitation.

10] The petitioner instituted a revision before the MRT challenging the SDO's order dated 31 March 1979. The MRT allowed this revision application and issued directions to the SDO to treat the appeal as revision application under Section 76 A of the Tenancy Act. The SDO (Special Land Acquisition Officer No.8), by order dated 29 July 1982 partly allowed the revision, set aside the ALT's order dated 31 May 1978 and remanded the matter for enquiry and retrial.

11] Upon remand, the ALT by order dated 24 December 1982, once again declared that the petitioner-tenant have lost rights to purchase the suit property as the purchase has been declared ineffective. This was on the basis that the petitioner failed to serve the necessary intimation as contemplated by Section 32F within two years from the date of respondent-landlord attaining majority or within two years from the date of receipt of intimation dated 10 February 1970 in terms of amended provisions contained in Section 32F(1A) of the Tenancy Act.

12] The petitioner once again challenged the ALT's order dated 24 December 1982 before the SDO vide Appeal No. 46 of 1983. The

SDO, however, dismissed the appeal by order dated 28 June 1983.

13] The petitioner challenged the SDO's order dated 28 June 1983 before the MRT vide Revision Application No. 38 of 1986. This revision was partly allowed by order dated 28 February 1991 and the matter was remanded to the SDO to decide the appeal afresh. By order dated 20 October 1991, the SDO has however, once again dismissed the petitioner's appeal.

14] It is pertinent to note that it is in this appeal upon remand that the petitioner raised the issue of the suit property being allegedly an Inaam land and that the suit property was never partitioned amongst the family members of the respondent-landlord, thereby attracting the proviso to Section 32F (1) (a) of the Tenancy Act.

15] The petitioner instituted a Revision Application No. 18 of 1992 before the MRT questioning the SDO's order dated 20 October 1991. By order dated 26 February 1998, the MRT has also dismissed the revision application.

16] Accordingly, this petition is directed against the aforesaid orders by the ALT, SDO and MRT concurrently holding that the purchase has been ineffective and the petitioner has lost his rights to purchase the suit property, which is required to be now restored to the landlord.

17] As noted earlier, the contention with regard to the suit property being Inaam land or being an unpartitioned property was never raised by the petitioner right from the year 1962 upto virtually, year 1990. The petitioner had opportunity to raise this kind of defence in the year 1962, when enquiry commenced under Section 32G of the Tenancy Act. As noted earlier, by order dated 29 April 1962, the enquiry was postponed on the precise ground that Ramabhau B. Patil, the landlord was a minor. This order, was admittedly not challenged by the petitioner on the ground, which they thereafter, sought to raise in the year 1990.

18] Thereafter, in terms of the amended provisions contained in Section 32F (1A) of the Tenancy Act, an intimation was given to the petitioner on 10 February 1970 with regard to exercise of right to purchase. At this stage, the petitioner should have either exercised

such right or in any case, even this was an opportunity to urge that he had already become the deemed purchaser by virtue of Section 32G of the Tenancy Act, as per his contention. However, no such plea was raised even at that stage.

19] In 1978, when the ALT once again initiated proceedings, the petitioner had yet another opportunity to raise such a plea, but the same was never raised. The matter was remanded on at least two occasions and in the first round no such plea was raised. Besides, there is nothing on record to substantiate that there was no re-grant in respect of suit property or that the suit property was indeed never partitioned, so as to attract proviso to Section 32F (1A) of the Tenancy Act. In these circumstances, it cannot be said that the SDO and the MRT have either failed to exercise jurisdiction vested in them or deprived the petitioner of any reasonable opportunity in the matter. It is not sufficient for the petitioner at a highly belated stage to simply raise some point without even substantiating the same or offering some plausible explanation as to what prevented him from raising such plea in the proceedings were going on for over three decades. There is no case made out to interfere with the orders of

the SDO and the MRT in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

20] Mr. Salunke, however, contended that the impugned orders are not right, insofar as they order restoration of the possession in favour of the landlord. Mr. Salunke submits that this was not permissible, taking into consideration the provisions contained in Sections 31 and 32F of the Tenancy Act. At this stage, it is not necessary to decide this issue, particularly as three authorities have held that the petitioner has lost the right to purchase the suit property. There is no case made out to interfere with the concurrent findings recorded by the three authorities, particularly since the findings are borne out from the material on record. Besides, the SDO in its order dated 20 October 1991 has after recording that the petitioner right to purchase is ineffective, directed the ALT to start the proceedings under Section 32P of the Tenancy Act for disposal of the land. It is this order of the SDO, which has been upheld by the MRT.

21] For all the aforesaid reasons, this petition is dismissed. Rule is discharged. The interim order stand vacated.

22] At this stage, Mr. Salunke requests for extension of interim order for a period of twelve weeks. Considering that the interim order has been in operation since the year 1998, this request is reasonable and therefore, the interim order is extended for a period of twelve weeks from today. The petitioner shall also maintain the *status quo* in respect of suit property.

(M. S. SONAK, J.)

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