

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.162 OF 2015

**Ganpat Soma Gangurde
since deceased through LRs
Namdeo Ganpat Gangurde and anr. : Petitioners.
versus
Motilal Dagaduram Mundada
since deceased through LRs
Kamalabai Motilal Mundada
since deceased through LRs
Dwarkanath Motilal Mundada and ors. : Respondents.**

**Mr. P N Joshi for the Petitioners.
Mr. Sandip D Shinde for the Respondent No.2.**

**CORAM : R. M. SAVANT, J.
DATE : 22nd November 2016**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 29/05/2012 passed by the learned President of the Maharashtra Revenue Tribunal (for short "MRT"), Mumbai by which order the Revision Application filed by the Respondents herein came to be allowed and resultantly the order dated --/08/2011 passed by the Sub Divisional Officer, Chandwad came to be set aside as also the order passed by the Tahsildar & ALT, Chandwad came to be set aside, resultantly the application filed under Section 32G read with Section 32F of the Bombay Tenancy and Agricultural Lands Act (Now Maharashtra Tenancy and Agricultural Lands Act) (for short "the said Act") came to be rejected.

2 The Petitioners herein claim to be the tenants in respect of the land admeasuring 3 H and 9 R in original Survey No.87 now Gat No.83 of village Dudhkhede, Taluka Chandwad. The landlady in respect of the said land was on the appointed day a widow and therefore purchase in respect of the said land necessarily stood postponed for a period of two years after the death of the landlady in terms of Section 32F of the said Act. It seems that the Petitioners had issued notice to the original landlord for purchase of the land in question under Section 32G of the said Act. It is an undisputed position that the Petitioners had not issued notice to heirs of the landlady Pyarabai Mundada within the time stipulated in Section 32F of the said Act, who had got the said land from the original landlord who was her brother.

3 The application filed by the Petitioners under Section 32G read with Section 32F of the said Act initially came to be rejected by the Tahsildar against which order an Appeal was filed by the Petitioners before the Sub Divisional Officer. It seems that after couple of remands the matter once again came to be remanded back to the Tahsildar, Chandwad who by his order dated 21/03/2006 allowed the said application. Aggrieved by the said order, the Respondents carried the matter once again in Appeal vide Appeal No.3 of 2009. The Sub Divisional Officer, Chandwad by his order dated --/-8/2011 allowed the said Appeal and remanded the matter back to the Tahsildar for a de-novo consideration in terms of the observations made in the said order.

According to the Sub Divisional Officer ("S.D.O." for short) the remand was necessitated firstly to consider whether the tenant came to know about the death of the landlady on 23/09/1989 when he had claimed to have paid rent from 13/06/1987 to the heirs of the landlady and therefore, according to the S.D.O. it was unbelievable that he was not aware of the death of the landlady Pyarabai. The second reason was that the actual land in possession of the tenant was 3 Hectors 09 Ares and the notice ought to have given only in respect of that portion of the land. The third reason was that whether it was necessary to issue a fresh notice in the light of the earlier notice issued and the fourth reason was that whether the heirs of the landlady were under obligation to inform the tenant about the factum of the death of the landlady. The S.D.O. was of the view that the aforesaid aspects were required to be gone into by the Tahsildar whilst deciding the application filed by the Petitioners under Section 32G read with Section 32F of the said Act.

4 The Respondents aggrieved by the said order dated --/08/2011 invoked the revisionary jurisdiction of the MRT under Section 76 of the said Act by filing Revision Application No.347/B/2011. As indicated above, the learned President of the MRT by the impugned order dated 29/05/2012 has allowed the Revision Application and thereby set aside the order passed by the S.D.O. remanding the matter back to the Tahsildar as also set aside the order passed by the Tahsildar allowing the application, and in terms has rejected the

said application filed by the Petitioners herein. The MRT was of the view that the Appellate Court is not required to remand the matter back to the lower authority just because it does not accept the findings recorded by the lower authority. The MRT was of the view that the Appellate Authority was within its powers to decide the said application on merits rather than remanding the matter back to the Lower Authority.

5 In so far as the merits of the case are concerned, since the core issue involved was whether the Petitioner tenant had issued notice to the heirs of the landlady within the time frame stipulated under Section 32F of the said Act, and consequently whether the Petitioner tenant is entitled to purchase the said land. The said issue has been dealt with by the MRT on the touchstone of the judgments of this Court as well as the Apex Court. The MRT has in the remand order referred to the judgment of the Apex Court reported in AIR 1999 SC 1963 in the matter of Appa Narsappa Magdon (dead) through LRs v/s. Akubai Ganapathi Nimbalkar and ors. wherein it has been held that the period of one year under Section 32F cannot be counted from the date of knowledge of tenant and equitable relief cannot be granted on the said basis, the judgment of a learned Single Judge of this Court reported in 1999(1) Mh. L.J. 923 in the matter of Ramrao Ganpat Patil v/s. Sau. Nandini Bhalchandra Kulkarni. In the said case a widow was the owner of 1/3rd share and sale in respect of same was postponed since no proceedings were adopted

for purchase of widow's interest within two years of her death. It was held that the right to purchase the said share in the said circumstances was lost. The MRT has thereafter relied upon another judgment of a learned Single Judge of this Court reported in 2001(1) Mh. L.J.867 in the matter of Kashiram Mahipati Bhaskar vs Khandu Tulshiram Jadhav. In the said case also the landlady was a widow and tenant had failed to give intimation within the specified period after her death. In the said circumstances it was held that the landlord was entitled to the restoration of possession as the tenant has failed to exercise his right. It was held that the compliance of Section 32F is mandatory inasmuch as on expiry of the prescribed period an indefeasible right is created in favour of the landlord to get back the possession of the tenanted lands. The MRT has lastly relied upon the judgment of the Apex Court in AIR 2009 SC 1126 in the matter of Tukaram Maruti Chavan v/s. Maruti Narayan Chavan wherein the Apex Court has held that the option ought to have been exercised within stipulated period. It was also held that the right given to the landlord under Section 31 of the Tenancy Act has nothing to do with the right given to the tenant under Section 32F of the said Act for purchasing the land and consequently it is to be held that the appellant in that case was under legal obligation and statutory duty to give notice of his intention to purchase the land as required under Section 32F of the Tenancy Act.

6 In the fact situation of the instant case wherein admittedly the

Petitioner tenant had not issued notice on the expiry of the period mentioned in Section 32F after the landlady's death. The MRT was of the view that the application could not be countenanced and therefore had to be rejected. The MRT accordingly allowed the Revision Application and as indicated above has set aside the order dated ---/08/2011 passed by the S.D.O. as also the order passed by the Tahsildar allowing the application filed by the Petitioners and has rejected the application filed by the Petitioners. It is the said order dated 29/05/2012 passed by the learned President of the MRT which is taken exception to by way of the above Writ Petition.

7 The learned counsel appearing on behalf of the Petitioners sought to justify the order of remand passed by the S.D.O. by reiterating the grounds on which the order of remand was necessitated. It was the submission of the learned counsel for the Petitioners that the issue of title of the said Pyarabai, as also the issue of creation of new tenancy on account of acceptance of rent by heirs of the landlady after her death was required to be adjudicated by the Lowest Authority i.e. the Tahsildar. The learned counsel for the Petitioners also sought to place reliance on the judgment of this Court reported in 2005(3) ALL MR 669 in the matter of Bajirao Jaisingrao Ghadage v/s. Rajaram Yeshwant Chougule.

8 In my view it is not possible to accept the aforesaid contentions

urged on behalf of the Petitioners by the learned counsel Shri P N Joshi. As indicated above the core issue is as to whether there is a compliance of Section 32F of the said Act by the Petitioners. On the basis of the admitted facts and law which have been referred to by the MRT, the finding of the MRT that there is no compliance of Section 32F cannot be faulted with. Hence the judgment in Bajirao Jaisingrao Ghadage's case (supra) would not aid the Petitioners. The MRT was right in observing that the Sub-Divisional Officer i.e. the Appellate Authority could not have remanded the matter back to the Tahsildar. The issues sought to be raised on behalf of the Petitioners by the learned counsel cannot be permitted to be raised by the Petitioners in an application under Sections 32G/32F of the said Act after having filed such an application. Hence this Court is of the view that there is no error of jurisdiction or any other illegality or infirmity committed by the MRT in allowing the Revision Application and setting aside the orders passed by the Sub Divisional Officer and the Tahsildar. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]