

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.927 OF 2015**

Devendra Babu Benichetke & Ors	..Petitioners
Vs.	
Ashok Neminath Herwade & Ors.	..Respondents

**WITH
WRIT PETITION NO. 1642 OF 2017**

Devendra Babu Benichetke & Ors	..Petitioners
Vs.	
Vimal Appaso Jangade & Ors.	..Respondents

**Mr. S. V. Sadavarte for the Petitioners in Writ Petition No.927 of 2015
Mr. S. R. Ganbavale for the Petitioners in Writ Petition No.1642 of 2017
and for the Respondent Nos.7 & 8 in Writ Petition No.927 of 2015
Mr. S. G. Karandikar a/w Mr. Vinod Sangvikar i/b Mr. U. R. Mankapure for
the Respondent Nos.1 to 5**

**CORAM : R. M. SAVANT, J.
DATE : 8th FEBRUARY, 2017**

P.C.

1 The Writ Jurisdiction of this Court is invoked in both the Petitions against the order dated 22-5-2014 passed by the Learned Member of the Maharashtra Revenue Tribunal (MRT for short) by which order, the Revision Application filed by the Respondent Nos. 1 to 5 herein came to be allowed and resultantly the order dated 17-10-2003 passed by the Sub Divisional Officer (SDO for short), Ichalkaranji, District Kolhapur, came to be set aside and the consequential direction as contained in the operative part of the order came to be issued.

2 The Petitioners in both the above Petitions claim to be the tenants of the land in question being Revisional Survey No.93/1A (old Survey No.385/A & 385/B) totally admeasuring 12 Acres and 14 Gunthas. The Respondent Nos.1 to 5 are undisputedly the landlords of the said land.

3 In so far as the proceedings under Section 32G are concerned which are initiated by the Petitioners abovenamed they have had a chequered history. The present Petitions can be said to be the third round of litigation in so far as the endeavour of the Petitioners to get the purchase price for the land in question filed under Section 32G is concerned. The genesis of the filing of the applications filed by the Petitioners however lies in the order dated 24-3-1959 passed by the Mamlatdar, Shirol in Tenancy Case No.438/56-57. The said order was passed under Section 31 of the Bombay Tenancy and Agricultural Lands Act (Now the Maharashtra Tenancy and Agricultural Lands Act, 1948, for short the said Act). By the said order, the application filed by the predecessor of the Respondent Nos.1 to 5 came to be allowed and the land in question i.e. the Revisional Survey No.93/1 (old survey No.385/A & 385/B) came to be divided into two halves, one half was given to the landlords and the second half was given to the Petitioners herein who have continued to occupy the same. The half which was given to the predecessors of the Respondent Nos.1 to 5 was handed over in possession of their predecessors as

a consequence of the said order dated 24-3-1959. There is no dispute about the aforesaid fact. The Petitioners herein thereafter in the year 1963 filed an application under Section 32G for fixation of the purchase price in respect of the land which has come to their share as a consequence of the order passed by the Mamlatdar, Shirol under Section 31 of the said Act. In the said proceedings it was brought to the notice of the Mamlatdar that the land in question has been brought within the area of the Jaysingpur Municipal Council vide gazette Notification dated 16-6-1946. The said Notification inter alia mentions the lands which have been brought within the area of the Jaysingpur Municipal Council amongst the host of lands which have been mentioned therein, is the land in question being survey Nos.385/A and 385.B. In view of the said Notification, the Tahsildar dropped the proceedings as the applicability of the provisions of the said Act especially Sections 32 to 32R was excluded. The said proceedings were accordingly dropped on 24-10-1963. The matter rested there for sometime. However the Petitioners once again filed an application under the said provision i.e. Section 32G on 11-8-1983, the said proceedings were also dropped by the Tahsildar by order dated 31-1-1985 on account of the said Notification dated 16-6-1946. However, since there was an error in the recording made by the Tahsildar that the predecessors of the Respondent Nos.1 to 5 filed an Appeal before the Sub Divisional Officer (SDO for short) in which Appeal the error was corrected by the SDO. Against the said order passed by the SDO, the Petitioners filed a

Revision Application before the MRT.

4 Suffice it would be to state that the said Revision came to be dismissed by the MRT by judgment and order dated 29-12-1994. With the passing of the said order dated 29-12-1994 by the MRT ended the second round in so far as the filing of the proceedings by the Petitioner under Section 32G are concerned. The Petitioners thereafter once again filed an application before the Tahsildar under the same provision, on 13-12-2002, the Tahsildar having regard to the antecedent facts as above, rejected the said application which he communicated to the Petitioners vide letter dated 13-3-2003. In the said letter, he has referred to the orders passed right from the year 1963 to the order dated 29-12-1994 as also the letter dated 13-8-1998 of the Assistant Collector, Ichalkaranji.

5 The Petitioners aggrieved by the said order dated 13-3-2003 filed an Appeal before the SDO. The SDO allowed the said Appeal by order dated 17-10-2003 and thereby set aside the order passed by the Tahsildar and directed the Tahsildar to issue a declaration under Section 32G and issue a certificate under Section 32M to the Petitioners. The gist of the reasoning of the SDO was that the authorities in the earlier rounds proceeded on an erroneous premise that the land in question was in Village Jaysingpur whereas in the actual fact the land was in Village Udagaon. The SDO also found fault

with the order passed by the Tahsildar on 29-12-1994 on the ground that the said order has been passed without hearing the Petitioners. The Tahsildar was of the view that since the Petitioners were the tenants of the lands in question even prior to the tillers date i.e. 1-4-1957 they are entitled to the declaration under Section 32G and to the issuance of certificate under Section 32M. The SDO as indicated above accordingly issued directions which are contained in the operative part of the order dated 17-10-2003.

6 The Respondent Nos.1 to 5 herein aggrieved by the said order dated 17-10-2003 carried the matter by way of a Revision before the MRT. The said Revision was numbered as Revision No.137 of 2003. The MRT has by the impugned order dated 22-5-2014 has allowed the Revision and has thereby set aside the order passed by the SDO and has also issued consequential directions which are contained in the operative part of the impugned order. The gist of the reasoning of the Learned Member of the MRT was that the provisions of Sections 32 to 32 R of the said Act are not applicable in view of the fact that the land in question was within the jurisdiction of the Jaysingpur Municipal Council as appearing in the gazette Notification dated 16-6-1946. The Learned Member of the MRT has also adverted to the earlier round of litigation and has observed that the said issue was concluded in the earlier round and the SDO in the teeth of the earlier orders had erred in allowing the Appeal filed by the Petitioners herein. As indicated above it is the said order

dated 22-5-2014 of the Learned Member of the MRT which is taken exception to by way of the above Petitions.

7 Heard the Learned Counsel for the parties.

8 It was the submission of the Learned Counsel Mr. Sadavarte appearing for the Petitioners in Writ Petition No.927 of 2015 that once an order is passed under Section 31 of the said Act and the land was partitioned in so far as the share which came to the Petitioners are concerned, they were entitled to a declaration that they are the deemed purchasers and were consequently entitled to the fixation of the purchase price and on payment to a certificate under Section 32M of the said Act. It was the submission of the Learned Counsel that the said right could not be taken away of the Petitioners though the land was notified as being within the jurisdiction of the Jaysingpur Municipal Council. In so far as the notification is concerned, the Learned Counsel for the Petitioners sought to place reliance on the order dated 24-11-1964 issued by the Revenue and Forest Department Government of Maharashtra, by which certain lands were deleted from Village Udgaon so as to constitute a new village Jaysingpur, relying upon the said notification, it was the submission of the Learned Counsel that the said lands came into Jaysingpur Municipal Council only in the year 1964 and since the application filed by the Petitioners was post the tillers day i.e. 1-4-1957, the Petitioners were entitled to a declaration under Section 32G and the certificate under Section 32M.

The Learned Counsel Mr. Ganbavale appearing for the Petitioners in Writ Petition No.1642 of 2017 would also support the submissions of the Learned Counsel Mr. Sadavarte.

9 Per contra the Learned Counsel Mr. Karandikar would contend that in view of the notification dated 16-6-1946 by which the land in question was constituted within the area of the Jaysingpur Municipal Council. The application of Section 32 to 32R was ousted and therefore the authorities were right in rejecting the application filed by the Petitioners under Section 32G of the said Act. It was the submission of the Learned Counsel that having regard to the said notification the orders passed by the authorities below could not be faulted with.

10 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above the instant round is the third round of litigation between the parties. In so far as the application filed under Section 32G by the Petitioners is concerned, the Petitioners earlier two attempts in the year 1963 and 1983 have failed. As indicated hereinabove, the second round culminated with the order dated 29-9-1994 passed by the MRT by which order the Revision filed by the Petitioners was dismissed. The foundation of the orders passed in the earlier rounds as well as the instant round is the notification dated 16-6-1946 which mentions the lands which are

within the jurisdiction of the Jaysingpur Municipal Council. There can be no dispute about the fact that Survey Nos.385A and 385B (Now Revision Survey No.93/1A) are the lands, amongst other lands covered by the said notification. Once that be so, then by virtue of Section 43C the provisions of Section 32 to 32R of the said Act became inapplicable. Hence though an order has been passed under Section 31 dividing the lands into two halves and that the Petitioners are in possession of the one half, the fact that the said lands have come within the jurisdiction of the Jaysingpur Municipal Council, dis-entitles the Petitioners to the benefits of Section 32 to 32R of the said Act. The SDO has for the reasons, which are really not germane to the consideration of the application under Section 32G, allowed the said Appeal filed by the Petitioners, which error has rightly been corrected by the MRT in Revision. The contention of the Learned Counsel that the Petitioners as a consequence of the order passed under Section 31 of the said Act are entitled to an automatic declaration under Section 32G and certificate under Section 32M, cannot be accepted. Once Section 32 to 32R are inapplicable, then the Petitioners are not entitled to a declaration under Section 32G or to the certificate under Section 32M. The said consequence is a result of the inapplicability of the said provisions. The order dated 24-11-1964 also does not further the case of the Petitioners, as by the said order there is only an alteration and addition in respect of the two villages i.e. Udagaon and Jaysingpur to constitute a new village Jaysingpur. The said order does not have any effect in so far as the

inapplicability of Section 32 to 32R of the said Act. Hence in so far as the present case is concerned, it is on as many as three occasions spread over the last about more than 50 years, that the authorities have concurrently held against the Petitioners. In my view, no case for interference in the Writ Jurisdiction of this Court is made out, the Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]