

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

WRIT PETITION NO. 2546 OF 1998

Shri Totappa Shivappa Lawange (Since deceased)
through his legal heirs

Smt.Kerubai Totappa Lawange and ors. ... Petitioners

vs

Suresh Dhondiba Chougule ... Respondent

Mr. S.G.Kudle for the Petitioners.

Ms.Sucheta Mirrashi for the Respondent.

CORAM : M.S.SONAK, J.

DATE : JUNE 23, 2017.

ORAL JUDGMENT :

1. Heard the learned counsel for the Parties.
2. The Petitioners who are the legal representatives of the original tenant challenged the judgment and order dated 2nd September 1997 made by the Maharashtra Revenue Tribunal (M.R.T.) Pune, allowing the landlord's Revision Petition against judgment and order dated 27th April 1993 made by the Sub-Divisional Officer (S.D.O.), Pandharpur.
3. In this case, there is no dispute that the Predecessor-in-

title of the Petitioners-Totappa Shivappa Lawange was the tenant in respect of the suit property which, the landlord was Dhondiba Chougule. On the Tillers day i.e. on 1st April 1957 however, Dhondiba Chougule was not living and was survived by his widow Smt. Parvatibai. Therefore, Tillers day stood postponed until the expiry of Parvatibai on 15th October 1987. Parvatibai was survived Suresh Dhondiba Chougule, (Chougule) the Respondent herein who is said to be the adopted son of Parvatibai.

4. The Petitioners state that they had issued notice dated 11th October 1989 to Chougule, which was duly received by him. Copy of such notice was also served upon the Agricultural Lands Tribunal on 12th October 1989. It is also the case of the Petitioners that the date of birth of Chougule being 25th April 1969, the said Chougule, was the major on the date of service of the notice dated 11th October 1989. On this basis, the Petitioners contend that they or their Predecessor-in-title had validly exercised the option for purchase of the suit property in accordance with the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Agricultural Tenancy Act).

5. The Respondent- Chougule on 1st January 1990 filed an application before the Tahasildar invoking the provisions of Section 32F and 32P of the Agricultural Tenancy Act seeking restoration of possession of the suit property mainly on the

ground that the Petitioners and tenants had failed to exercise option for purchase of the suit property within the prescribed period of two years in terms of Section 32F of the Agricultural Tenancy Act.

6. The Tahasildar (Agricultural Lands Tribunal) vide judgment and order dated 13th August 1992 allowed the Respondent-Chougule's application and directed the restoration of the possession of the suit land. The Tahasildar (Agricultural Lands Tribunal) held that there was no valid service notice upon the Respondent-Chougule within a period of two years from the date of demise of Parvatibai on 15th October 1987.

7. The Petitioners aggrieved by the Tahasildar's (Agricultural Lands Tribunal) order dated 13th August 1992, appealed to the Sub-Divisional Officer, Pandharpur, (SDO) who, vide judgment and order dated 27th April 1993 accepted the case of the Petitioners and set aside the Tahasildar's judgment and order dated 13th August 1992.

8. Aggrieved by the SDO's order dated 27th April 1993 the Respondent-Chougule instituted a Revision Petition before the MRT, which has, vide the impugned judgment and order dated 2nd November 1997, set aside the SDO's order dated 27th April 1993 and restored the Tahasildar's order dated 13th August 1992. Hence, the present Petition by the Petitioners'

impugning MRT's judgment and order dated 2nd September 1997.

9. Mr. Kudle the learned counsel for the Petitioners has made the following submissions in support of the Petition.

(a) The Appeal Court i.e. the SDO, which is the Final Court on facts has recorded a categorical finding that the notice expressing intention to purchase was served upon Chougule on 11th October 1989, with a copy marked to the Agricultural Lands Tribunal received by the Agricultural Lands Tribunal on 12th October, 1989. The MRT which has limited revisional jurisdiction in terms of Section 76 of the Agricultural Tenancy Act, has exceeded jurisdiction in interfering with the finding of fact recorded by the SDO. Since, the exercise by the MRT in interfering with a pure finding of fact is in excess of jurisdiction, the same is required to be set right by this Court in exercise of its extra ordinary jurisdiction under Sections 226 and 227 of the Constitution Act.

(b) From the material on record it is quite clear that Chougule, whose date of birth was

25th April 1969 had attained majority on 11th October 1989. In such circumstances, the MRT clearly exceeded jurisdiction in holding the notice served on 11th October 1989, was notice served upon a minor landlord and therefore, not a valid notice for the purpose of Section 32F of the Agricultural Tenancy Act.

(c) Without prejudice Mr. Kudle submits that if Respondent-Chougule is to be regarded as minor on 11th October 1989, then, it is for Respondent-Chougule to send an intimation to the tenant of the fact of his attaining majority before expiry of the period during which such landlord is entitled to terminate tenancy under Section 31 of the Agricultural Tenancy Act. In the present case, Mr. Kudle points out that no such intimation was sent and in absence of any such intimation, Chougule's application seeking restoration of possession was not at all maintainable.

10. Ms.Sucheta Mirrashi, learned counsel for the Respondent-Chougule submits that there is absolutely no material on record to establish service of notice upon Suresh on 11th October 1989. Both, the Tahasildar as well as MRT have

returned categorical findings in this regard. Chougule had always signed documents and never put his thumb impression in token of signature. The postal acknowledgment, upon which, the Petitioners placed reliance is said to contain to purported thumb impression of Chougule. She submits that there is no reason as to why Chougule would put his thumb impression upon the postal acknowledgment receipt when, in fact, Chougule used to put his signature on all documents as held by the Tahasildar and the MRT.

11. Ms. Mirrashi further submits that on 11th October 1989, Respondent-Chougule was a minor and therefore, any alleged service upon as minor can never be regarded as valid service in the eyes of law. She submits that this reasoning of the MRT is correct and cannot be faulted. Ms. Mirrashi also submits that the Petitioners, in the synopsis have rightly made no reference to the notice dated 11th October 1989, but rather have made reference to notice dated 20th August 1990, which is admittedly beyond the period of two years from the death of widowed landlady-Parvatibai. In such circumstances, Ms. Mirrashi submits that there is absolutely no legal infirmity in the impugned order which may not be disturbed by this Court, in the exercise of the extra ordinary jurisdiction.

12. At the outset, it is necessary to state that there is absolutely no dispute that the Predecessor-in-title of the

Petitioners were the tenants in respect of the suit property of which the Predecessor-in-title of the Respondents were the landlords.

13. The only question which arises for determination is whether the application made by the Respondent-landlord seeking restoration of possession of the suit property in terms of Section 32F r/w Section 32P of the Agricultural Tenancy Act was maintainable, in view of the provisions contained in Section 31 and Section 32F of the Agricultural Tenancy Act?

14. Section 31 of the Agricultural Tenancy Act reads as follows:-

“Section 31- Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose:-(1) Notwithstanding anything contained in sections 14 and 30 but subject to sections 31A to 31D (both inclusive), a (landlord (not being a landlord within the meaning of Chapter III-AA) may), after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona fide requires the land for any of the following purposes:-

(a) for cultivating personally, or

(b) for any non-agricultural purpose.

(2) The notice required to be given under sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the

31st day of December, 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession under section 29 shall be made to the Mamlatdar on or before the 31st day of March, 1957.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice may be given (and an application for possession under section 29 may be made)-

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

(Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if atleast one member of the joint family is outside the categories mentioned in this sub-section 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 inquiry 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.

(Emphasis supplied)

15. Similarly, Section 32F of the Agricultural Tenancy Act read as follows:-

Section 32F--- Right of tenant to purchase where landlord is minor, etc.-(1) Notwithstanding anything contained in the preceding section,-

(a) Where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 (and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31:)

(Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall 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 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry 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.)

(b) Where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provision of clause (a), the right

to purchase land under section 32 may be exercised,-

- (i) by the minor within one year, from the date on which he attains majority;
- (ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;
- (iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;
- (iv) within one year from the date on which the tenant ceases to be serving member of the armed forces:

(Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall 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 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry 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.)

(A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section:)

(Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws

(Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act.)

(2) The provisions of sections 32 to 32E (both inclusive) and sections 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase.”

(Emphasis supplied)

16. It is the case of the Petitioners that the option to purchase the suit property was duly exercised by the Petitioners within a period of two years from the date of demise of the widowed landlady-Parvatibai. For this purpose the Petitioners rely the service of the notice upon Parvatibai's adopted son-Chougule, the Respondent herein on 11th October 1989. The Tahasildar (Agricultural Lands Tribunal) has disbelieved the Petitioners' case of service of notice on 11th October 1989. However, the SDO, which is the Appeal Court has believed the Petitioners' case of service of notice on 11th October 1989. The Appeal Court has not only relied the postal acknowledgment which purports to bear thumb impression of Respondent-Chougule but also found the factum of service of notice in the office of Tahasildar (Agricultural Lands Tribunal) on 12th October 1989. The MRT in the exercise of its revisional jurisdiction under Section 76 of the Agricultural Tenancy Act, has however, reversed the SDO's

order.

17. Section 76 of the Agricultural Tenancy Act reads as follows :-

*“76- Revision:-(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the (Maharashtra Revenue Tribunal) constituted under the said Act **against any order of the Collector on the following grounds only-***

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the (Maharashtra Revenue Tribunal) shall follow the procedure which may be prescribed by rules made under this Act after consultation with the (Maharashtra Revenue Tribunal).

18. Upon due consideration of the provisions in Section 76 of the Agricultural Tenancy Act, it is clear that the MRT can exercise revisional jurisdiction and interfere with the SDO's order only on certain well defined grounds :-

(a) that the impugned order was contrary to law; or

(b) that the Collector/SDO failed to determine some

material issue of law; or

(c) that there was a substantial defect in following the procedure provided by the Agricultural Tenancy Act, which has resulted in miscarriage of justice.

19. The MRT, in the present case, whilst purporting to exercise revisional jurisdiction, does not appear to have adverted to the parameters prescribed in Section 76 of the Agricultural Tenancy Act. The MRT's impugned order dated 2nd September 1997 does not indicate the ground on which the revisional jurisdiction has been exercised. The MRT, has no doubt, interfered with a finding of fact recorded by the SDO on the aspect of service of notice upon Respondent-Chougule. However, the reversal, is tentative. The MRT in the impugned judgment and order, does not record that the finding of fact arrived at by the appellate court i.e. SDO, was a perverse finding.

20. The MRT, as noted earlier, is itself not clear on the aspect of service of notice upon Respondent-Chougule. At one place, it appears that the MRT upon re-appreciation of the material on record, suggest that there was no service of notice upon Respondent-Chougule on 11th October 1980. At another place, the MRT, seems to suggest that there may have been service of notice but since on the said date, the Respondent-Chougule was a minor, such service, is no service in the eyes of law. Again, in the record of such tentative findings, the MRT, has not adverted to the

entire material on record, including, in particular, the material with regard to the date of birth of Respondent-Chougule or the material with regard to service of a copy of the notice upon the Tahsildar (Agricultural Land Tribunal), on 12th October 1989 in terms of Section 32F of the Agricultural Tenancy Act. In terms of section 32F of the Agricultural Tenancy Act, tenant, who is desirous of exercising right to purchase the tenanted property in terms of sub section (1), is required to give an intimation in that behalf, both to the landlord as well as the Tribunal in the prescribed manner within the period specified in the said sub section. If the records reveal that the tenant had indeed served notice dated 11th October 1989, upon the office of the Tahsildar (Agricultural Land Tenancy) on 12th October 1989 i.e. within the prescribed period of two years from the date of demise of widowed – Parvatibai, then, this is a significant circumstance in support of the tenant's contention that such notice / intimation was also given to the Respondent-landlord on 11th October 1989. The MRT prior to reversing the SDO's order dated 27th April 1993, was required to advert to all such circumstances, apart from the relevant provisions of the Agricultural Tenancy Act.

21. Further, even if the finding recorded by the MRT to the effect that on 11th October 1989, the Respondent-Chougule was a minor, and therefore, any alleged service of notice upon a minor, cannot be regarded as valid service in the eyes of law, is to be accepted, then, the MRT, was duty bound to consider the impact of the

provision contained in Section 32F (1)(a) of the Agricultural Tenancy Act to such a situation. This provision, clearly obliges a minor landlord to send an intimation to the tenant of the factum of his attaining majority before the expiry of period during which such landlord is entitled to terminate the tenancy in terms of Section 31 of the Agricultural Tenancy Act. In this case, at least *prima facie*, there is no material on record to suggest that any such intimation was ever given by Respondent-Chougule to the tenants. Again, this aspect, has not even been touched by the MRT, in the making of the impugned judgment and order dated 2nd September 1997.

22. In the aforesaid circumstances, it will be appropriate if the MRT's impugned judgment and order dated 2nd September 1997 is set aside and the matter is remanded to the MRT for reconsideration of the Respondent's Revision Petition against SDO's order dated 27th April 1993. The MRT's impugned judgment and order dated 2nd September 1997, is accordingly set aside and the matter is remanded to the MRT with a direction to take up and dispose of in accordance with law and on its own merits the Respondent's Revision Petition against the SDO's order dated 27th April 1993 as expeditiously as possible and in any case, within a period of one year from the date of production of authenticated copy of this judgment and order.

23. The MRT, in pursuance of the remand, is directed to

dispose of the Respondent's Revision Petition on its own merits and in accordance with law. The observations in the present judgment and order would be regarded as only *prima facie* and the MRT need not be influenced by the same in disposing of the Respondent's Revision Petition. However, the MRT, is requested to address itself to all relevant matters, including, the matters adverted to in paragraphs 20 and 21 of this judgment and order, as also, relevant provisions of the Agricultural Tenancy Act, which have bearing upon the matter.

24. The parties to appear before the MRT on 18th July, 2017 at 11.00 a.m. and to produce authenticated copy of this Order. The MRT is requested to dispose of the Revision Petition as expeditiously as possible and in any case within a period of one year from the date of the parties filing authenticated copy of this Order.

25. The Rule is accordingly disposed of in the aforesaid terms. There shall however no order as to costs.

26. All concerned to act on the authenticated copy of this order.

(M.S.SONAK, J.)