

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8000 OF 2017

Shamrao Tukaram Patil ... Petitioner
Vs.
Deepak Shivaji Patil and others ... Respondents

WITH
WRIT PETITION NO.979 OF 2018

Shamrao Tukaram Patil ... Petitioner
Vs.
Deepak Shivaji Patil and others ... Respondents

Mr. S. G. Deshmukh i/b. Mr. Dilip Shinde a/w. Mr. Pravin More for
Petitioner.
Mr. Shekhar Jagtap i/b. J. Shekhar & Co. for Respondents No.1 to 3.
Mr. S. H. Kankal, AGP for Respondents No.4 to 6-State.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 11, 2018

P.C. :

Heard Mr. Deshmukh, learned Counsel for the petitioner,
Mr.Jagtap, learned Counsel for the respondents No.1 to 3 and
Mr.Kankal, learned AGP for respondents No.4 to 6- State in both the
Petitions at length.

2. Leave to delete respondent No.7 - Member of Maharashtra
Revenue Tribunal, Pune Bench, Pune is granted. Amendment shall be
carried out forthwith.

3. Writ Petition No.8000 of 2017 takes exception to the order dated
20.04.2017 passed by the learned Member, Maharashtra Revenue
Tribunal, Pune Bench, Pune (for short 'Tribunal') in Revision
Application No.TNC/Rev/164/2007/SS. By that order, the Tribunal

allowed the Revision Application filed by the respondents No.1 to 3 herein (for short 'landlords') under Section 76 of the then Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act') and set aside the order dated 30.10.2005 passed by the Tahsildar and Agricultural Lands Tribunal, Walva (for short 'A.L.T.') in Tenancy Case No.32P/36/2004 as also the order dated 24.05.2007 passed by the Sub-Divisional Officer, Islampur (for short 'S.D.O.') in Tenancy Appeal No.10 of 2006. The Tribunal allowed the application made by the landlords under Section 32-P of the Act and directed the petitioner, hereinafter referred to as a 'tenant', to handover possession of land admeasuring 0-26 Ares, Hissa - 5 Ana 4 Paise in Gat No.172 and land bearing Gat No.177 admeasuring 0-35 Ares, Hissa - 5 Ana 4 Paise (for short 'suit lands'), within 3 months that is to say, on or before 20.07.2017, failing which the *mesne* profits enquiry shall be held under Order XX, Rule 12(c) of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

4. Writ Petition No.979 of 2018 is directed against the order dated 04.12.2017 passed by the Tribunal. By that order, the Tribunal allowed the application made by the landlords for correcting name of the village from “Aitwade Khurd” to “Tandulwadi” and for substituting “Section 29(1)” by “Section 29(2)” in the order dated 20.04.2017 made by the Tribunal.

5. Rule. Learned Counsel for the respective respondents waive service. In view of the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing. Since the common questions of law and facts arise in these Petitions, the same can conveniently be disposed of by this common order. The relevant and material facts giving rise to filing of the Petition, briefly stated, are as

under:

6. On 10.12.1976, tenant filed application under Section 70(b) of the Act being Tenancy Case No.200 of 1976 for a declaration that he is a tenant of the suit lands. By order dated 31.12.1976, A.L.T. declared that petitioner is the ordinary tenant of 1/3rd share of the suit lands and further ordered that his name should be entered in the column of 'other rights' as a tenant. In the order, A.L.T. recorded that both the parties admitted in their depositions at exhibits-5 and 6 that petitioner is cultivating the suit lands as a tenant since two to three years and that the suit lands are in his possession. In other words, petitioner was inducted as a tenant in respect of the suit lands after the tiller's day i.e. 01.04.1957.

7. As the petitioner did not exercise his rights within one year from the commencement of such tenancy, landlords filed application on 13.12.2004 under Section 32-O read with Section 32-P for resumption and disposal of the land. Tenant filed his reply dated 27.06.2005. The petitioner also filed written arguments on 03.10.2005. After considering the material on record, by order dated 30.10.2005, the A.L.T. dismissed the application. Aggrieved by this decision, landlords have preferred appeal under Section 74 of the Act before the S.D.O. being Tenancy Appeal No.10 of 2006. By order dated 24.05.2007, S.D.O. dismissed the appeal. Aggrieved by these decisions, landlords preferred revision application under Section 76 of the Act before the Tribunal. By order dated 20.04.2017, the Tribunal allowed the revision application, as indicated hereinabove. It is against this order, tenant has instituted Writ Petition No.8000 of 2017.

8. Landlords thereafter filed application bearing Miscellaneous Application No.SS/IV/1/17 for substitution of the name of the Village

from “Aitwade Khurd” to “Tandulwadi” and for substitution of “Section 29(1)” to “Section 29(2)” in the order dated 20.04.2017. By order dated 04.12.2017, the Tribunal allowed that application. It is against this order, tenant has instituted Writ Petition No.979 of 2018.

9. In support of Writ Petition No.8000 of 2017, Mr. Deshmukh strenuously contended that the application made by the landlords under Section 32-O read with Section 32-P of the Act, itself, is not maintainable. The application is not made under Section 29(2) of the Act within a period of 2 years from the date on which the right to obtain possession had accrued to them. In the instant case, the tenant did not purchase the suit lands within one year from commencement of the tenancy. The landlords ought to have filed application within two years from 31.12.1977. The landlords filed application on 13.12.2004, which is not within a period of two years as prescribed under Section 29(2) of the Act. He submitted that remedy available under Section 32-P can be resorted to by the landlords only after complying the requirement laid down under Section 29(2) of the Act. He submitted that the proceedings under Section 32-P could be initiated only if an order is passed by the Competent Authority holding that the purchase of the tenant has become ineffective. In the present case, no order is passed by the Competent Authority holding that the purchase of the tenant has become ineffective. In support of this proposition, he relied upon the decision in **Arvind D. Mehta Vs. Genu T. Bhoir, 2009 (3) Bom.C.R. 858**, and in particular 7 thereof.

10. Mr. Deshmukh alternatively contended that even if it is held that the limitation prescribed under Section 29(2) is not applicable to the proceedings initiated under Section 32-P, nonetheless institution of proceedings under Section 32-P almost after 27 years was improper and

barred by limitation. He relied upon paragraph 17 of ***Sambhaji Shripati Bankar Vs. Keshav Rangnath Ekbote, 2010 (3) ALL MR 854***. He submitted that in the instant case, tenant did not purchase the suit lands within one year from 31.12.1976. The period of one year expired on 31.12.1977. The application under Section 32-O read with Section 32-P of the Act is made on 13.12.2004 that is nearly after 27 years. In the impugned order, the Tribunal held that as no limitation is prescribed under Section 32-P, the principle that the proceedings ought to have been instituted within a reasonable time is not applicable. He, therefore, submitted that the impugned order dated 20.04.2017 deserves to be set aside.

11. On the other hand, Mr. Jagtap supported the impugned orders. He invited my attention to the application dated 13.12.2004 made by the landlords. In paragraph 2 of the application, it is asserted that landlords' father Shivaji died on 27.02.2004 leaving behind them as heirs and legal representatives. Shivaji was addicted to excessive drinking and taking undue advantage of this fact, petitioner-tenant has instituted tenancy proceedings in the year 1976 and obtained order in his favour. He submitted that as predecessor-in-title of the landlords died on 27.02.2004, immediately thereafter, within 10 months, application under Section 32-O read with Section 32-P is made, and therefore, it is filed within reasonable time.

12. He further submitted that in the present case, it is not in dispute that the tenant was inducted some time in the year 1975-76. In other words, tenant was not cultivating the suit lands on the tiller's day i.e. 01.04.1957. In view thereof, Section 32-G and 32-M of the Act is not applicable. As the tenant did not purchase the suit lands within one year from the commencement of the tenancy, his rights are extinguished, and

therefore, the Tribunal was justified in holding that the concept of instituting proceedings within reasonable time is not applicable in the present case as basically no limitation is prescribed under Section 32-P of the Act. He relied upon the following decisions:

- a. ***Sakinabibi Rajabali Bohri Vs. Tukaram Gopal Gharat, 1979 Mh.L.J. 302***; and
- b. ***Pandurang Vishnu Zodage Vs. Baburao Baban Gosavi, 2000 (4) ALL MR 762.***

13. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the tenant filed application under Section 70(b) of the Act on 10.12.1976. By order dated 30.12.1976, A.L.T. declared that the petitioner is the ordinary tenant of 1/3rd share of suit lands and that his name should be entered in 'other rights' column as a tenant. While answering issue No.1, A.L.T. noted that both the parties admitted in their depositions that petitioner herein is cultivating the suit lands as a tenant since two to three years. Thus, this is not a case where petitioner was inducted as a tenant prior to 01.04.1957.

14. In order to appreciate the contention of Mr. Deshmukh that even while filing proceedings under Section 32-P, landlord has to follow procedure laid down under Section 29 is concerned, it is necessary to consider the scheme of the Act. Heading of Chapter II of the Act is “General Provisions regarding Tenancies”. Section 3 to Section 30 fall in Chapter II. Section 14 deals with termination of tenancy for default of tenant in paying rent; in doing act which is destructive or permanently injurious to the land; sub-dividing, subletting or assigning the land in contravention of Section 27; failure to cultivate the land personally; using land for the purpose other than agriculture or allied pursuits.

Section 25 deals with relief against termination of tenancy for non-payment of rent. It reads thus,

“S.25 Relief against termination of tenancy for non-payment of rent:

(1) Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding, within 3 [three months] from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated :

Provided that if the Mamlatdar is satisfied that in consequence of total or partial failure of crops or similar calamity the tenant has been unable to pay the rent due, the Mamlatdar may for reasons to be recorded in writing, direct that the arrears of rent together with costs of the proceeding if awarded, shall be paid within one year from the date of the order and that if before the expiry of the said period the tenant fails to pay the said arrears of rent and costs, the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted.

(2) Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default.”

15. Section 27 prohibits sub-division, sub-letting and assignment. Section 29 deals with procedure of taking possession. Section 29(1) lays down that a tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house **under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar**. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be. Sub-section (2) lays down that save as otherwise provided in

sub-section (3A), no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to have accrued to him. Sub-section (3) lays down that on receipt of application under sub-section (1) or (2), the Mamlatdar shall, after holding an inquiry, pass such order thereon as he deems fit. Proviso thereof lays down that where an application under sub-section (2) is made by a landlord in pursuance of the right conferred on him under section 31, the Mamlatdar shall first decide, as preliminary issues, whether the conditions specified in clauses (c) and (d) of section 31A and sub-sections (2) and (3) of section 31B are satisfied. If the Mamlatdar finds that any of the said conditions is not satisfied, he shall reject the application forthwith. Sub-section (3-A) lays down that where a landlord proceeds for termination of the tenancy under sub-section (1) of section 43-1B, then, notwithstanding anything contained in this Act, the application for possession of the land shall be made to the Collector, who shall after holding an inquiry in the prescribed manner, pass such order thereon as he deems fit. Section 30 lays down that the rights and privileges of the tenants shall not be affected.

16. Then comes Chapter III dealing with special rights and privileges of tenants and provisions for distribution of land for personal cultivation. Section 31 lays down that 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, namely, (a) for cultivating personally, or (b)

for any non-agricultural purpose. Sub-section (2) thereof lays down that 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. Sub-section (3) thereof deals with cases where a landlord is a minor, or a widow, or a person subject to mental or physical disability. In the present case, we are not concerned with sub-section (3) of Section 31.

17. Section 31-A lays down the conditions to be satisfied by the landlord while terminating the tenancy for cultivating the land personally. Section 31-B lays down that no termination of tenancy is permissible in contravention of Bombay LXII of 1947 or if a tenant is member of co-operative farming society. Section 31-C lays prohibits landlord from terminating tenancy for personal cultivation of land left with tenant. Section 31-D lays down that if, in consequence of the termination of the tenancy under section 31, any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner in proportion to the area of the land left with the tenant. Section 32 lays down that on the first day of April, 1957, every tenant shall, subject to the other provisions of section 32 and the provisions of the next succeeding section, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if he satisfies the conditions stipulated in clauses (a) and (b).

18. Section 32-G deals with issuance of notice by the Tribunal and determination of price of land to be paid by the tenants. Sub-section (1)

thereof lays down that the Tribunal shall publish a public notice calling upon all tenants who under under Section 32 are deemed to have purchased the lands, all landlords of such lands, and all other persons interested therein to appear before it. In addition, the Tribunal shall also issue a notice individually to each tenant, landlord and also as far as practicable other persons calling upon each of them to appear before it on the date specified in the public notice. Sub-section (2) thereof lays down that the Tribunal shall record in the prescribed manner, the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant. Sub-section (3) is crucial in the present case and lays down that where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. Proviso thereof lays down that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same. Section 32-M lays down that purchase shall be ineffective on tenant-purchaser's failure to pay purchase price. On the deposit of the price in lump sum or of the last installment of such price the Tribunal shall issue a certificate of purchase in the prescribed form, to the tenant-purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. In the event of failure of recovery of purchase price as arrears of land revenue under sub-section (3) of section 32K, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal under section 32P and any amount deposited by such tenant purchaser towards the price of the land shall be refunded to him.

19. Section 32-O reads thus,

“S.32O. Right of tenant whose tenancy is created after Tiller’s day to purchase land:

(1) In respect of any tenancy created after the tillers’ day by a landlord (not being a serving member of the armed forces) notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

(1A) 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.

(2) The provision of section 32 to 32N (both inclusive) and of sections 32P, 32Q, and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1).”

20. Section 32-P(1) reads thus,

“32-P Power of Tribunal to resume and dispose of land not purchased by tenant:

(1) Where the purchase of any land by tenant under section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F, 32 O, 33C or 43-1D, the Tribunal may suo motu or on an application made on this behalf and in cases other than those in which the purchase has becomes ineffective by reasons of section 32G or 32M, after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2).”

21. A perusal of Section 32-P(1), extracted hereinabove, shows that where the purchase of any land by tenant under section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F, 32 O, 33C or 43-1D, the Tribunal may suo motu or on an application made on this behalf and in cases other than those in which the purchase has becomes ineffective by reasons of section 32G or 32M, after holding a formal inquiry direct that the land shall be disposed of in the

manner provided in sub-section (2).

22. Mr. Deshmukh relied upon decision in **Arvind D. Mehta** (*supra*) to contend that proceedings under Section 32-P could be initiated only if an order is passed by the Competent Authority holding that purchase of the tenant has become ineffective. I do not find any merit in this submission. As mentioned earlier, in the present case, Section 32-G or Section 32-M is not applicable. In the present case, parties are governed by Section 32-O of the Act. As noted earlier, Section 32-P lays down two contingencies, namely, (1) where the purchase of any land by tenant under section 32 becomes ineffective under Section 32-G or 32-M; or (2) where a tenant fails to exercise the right to purchase the land held by him within the specified period under Section 32-F, 32-O, 33-C or 43-1D. In the present case, tenant has failed to exercise right to purchase the land held by him within the period specified under Section 32-O. In view thereof, the decision in **Arvind D. Mehta** (*supra*) is not applicable to the facts of the present case.

23. Mr. Deshmukh submitted that even while filing proceedings under Section 32-P, landlord has to follow procedure laid down under Section 29(2) of the Act. He has to file application within a period of 2 years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to him. In the present case, right to obtain possession accrued to the landlords on 31.12.1977. As the application is not made within a period of two years, proceedings instituted under Section 32-P are barred by limitation. Having regard to the scheme of the Act mentioned earlier, Section 29 can be invoked after terminating the tenancy under Section 14 as also subject to right of the landlord under Section 31 and complying with conditions under Section 31-A. In the present case, landlords have not sought possession on the ground of default in payment of rent under Section 14 or on the ground

of requiring the land, bonafide, for cultivating personally or for any agricultural purpose. Section 32-P deals with altogether different situation as indicated earlier. In view thereof, I do not find any merit in the submission of Mr.Deshmukh that even if proceedings are instituted under Section 32-P, the landlord has to follow the procedure under Section 29 of the Act. That brings me to his last contention based on the decision of this Court in **Sambhaji Shripati Bankar** (*supra*), and in particular paragraph 17 thereof. In paragraph 17, the learned Single Judge of this Court observed thus,

“17. By analogy, the same view can be taken in the context of the action provided under section 32P of the BT&AL Act. This Court in "Gulabrao Bhaurao Kakade since deceased by L.Rs. and others v. Nivrutti Krishna Bhilare and others" 2001 (4) Mh.L.J. 31, held that the powers under section 32 (1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 are required to be exercised within reasonable period though no specific limitation is provided for. The absence of specific period of limitation will not give a licence to the competent authority to initiate action at any point of time though it has become too stale. The law does not expect keeping democles' sword hanging on head of any litigant for perennial period. For all these reasons, I have no hesitation in holding that institution of such proceedings under section 32P after about 28 years was improper and barred by limitation.”

24. In the present case, proceedings under Section 32-P are initiated on 13.12.2004. In the impugned order, the Tribunal has observed that as no limitation is prescribed under Section 32-P, the principle that the proceedings have to be instituted within a reasonable time is not applicable. In my opinion, the Tribunal has committed error apparent on the face of the record in observing that the principle of reasonable time is not applicable. In the case of **Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare**, 2001 (4) Mh.L.J.31, in paragraph 6, the Division Bench has observed thus,

“6. The power given to the Settlement Commissioner for variation of the scheme is on account of an error other than

that referred to in section 31A, irregularity or informality after following the procedure prescribed. Though there is no time limit prescribed under Section 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed under section 32, the said power can only be exercised within reasonable period in any case. What would be the reasonable period for exercise of power under Section 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case and we do not intend to lay down any specific period for exercise of that power by Settlement Commissioner but ordinarily exercise of such power after three years of finalisation of scheme under section 22 may not be Justified. In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which has come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time. The fact is and that is not disputed that the earlier scheme was finalised in the year 1973 under the Act of 1947 to the knowledge of all the parties concerned. Nobody was aggrieved by the said scheme finalised under the Act of 1947 and the scheme came into force under section 22. The said scheme which had been finalised in accordance with law and came into force and continued to be in force, could not have been unsettled by initiating the proceedings for variation under section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years. Thus, the exercise of power by Settlement Commissioner under section 32 for variation of the scheme in the facts and circumstances of the present case is grossly unjustified.”

25. Thus, even if the Tribunal is right in holding that no limitation is prescribed under Section 32-P of the Act, nonetheless, the Tribunal is not right in holding that proceedings need not be initiated within a reasonable time. In my opinion, the proceedings under Section 32-P have to be initiated within a reasonable time. As held by the Division Bench what would be the reasonable period for exercise of power would depend on facts and circumstances of each case. In view thereof, the impugned order to this extent only is liable to be set aside. By way of abundant caution, it is made clear that the Tribunal will now decide whether respondents No.1 to 3 (landlords) have initiated proceedings

under Section 32-P within a reasonable time or not. Save and except this, the Tribunal will not decide any other issues. Hence, the following order:

- a. Impugned order dated 20.04.2017 is set aside;
- b. Revision Application is restored to the file of the Tribunal;
- c. Parties will appear before the Tribunal on 07.01.2019 and for that purpose, no fresh notice be issued to them;
- d. The Tribunal shall fix a suitable date and will decide this issue within 8 weeks from fixing suitable date;
- e. Rule is made absolute in Writ Petition No.8000 of 2017 and Rule is discharged in Writ Petition No.979 of 2018.
- f. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab