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

WRIT PETITION NO. 7117 OF 2018

Ms. Ambika Dattatraya Jadhav
(Since deceased) through her legal
heirs

.....Petitioners

V/s.

Sitaram Khushaba Aamle
(Since deceased through his heirs)
and others

.....Respondents

Mr. Deepak Enakphale I/b Mr. N. P. Deshpande for the petitioner

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 11, 2018.

P.C.

In village Bhukam, Taluka Mulshi, land owner Kaluram was holding survey no. 70, 499, 50/2.

2 The learned Tahsildar, while dealing with proceedings under section 32 (G) (1) of Bombay Tenancy and Agricultural Lands Act 1948 (Hereinafter referred to as 'the Act' for the sake of brevity) has held as under:

Iresh
Siddharam
Mashal

“PRELIMINARY POINTS FOR CONSIDERATION

- | | |
|---|--|
| 1) Whether the tenant holds as tenant lands if any other village or villages | No |
| 2) Particulars of land hold by the tenant | As owner AG 13 5 AG as Tenant 30-17 |
| 2) Whether the tenant to whom the individual notice has been issued is entitled to the right of purchase. | Yes. The opponent or a tenant----- the land on 1-4-17 He is successor of Deceased brother he is entitled to the right of purchase. |
| 3) Whether the tenant is willing to purchase the land? | Yes. The tenant is willing to purchase the land. |

POINTS FOR FURTHER INQUIRY

- | | |
|---|---|
| 1) Is the tenant entitled to the right of purchase under section 32G on the tillers day (i.e. whether the land under category of certificate Under section 81 in any | Yes. The land lord has an exemption certificate. The suit land are in the category of exlands. The tenant has to the right of purchase on it. |
| 2) If so that extent of the land to which the Tenant is entitled to purchase i.e. the limit of selling area (please 64 Section bore) Backward area and warkar lands and only grazing lands. | The whole area of the suit land. |

- | | |
|--|---|
| 3) <i>What should be the purchase price.</i> | <i>Rs. 4,666-50 N.P.
four thousand six
hundred and sixty
six & 50 nps</i> |
| i) <i>Whether price is mutually
agreed upon</i> | <i>No</i> |
| ii) <i>Is there any previous contract of sale</i> | <i>Nil</i> |
| iii) <i>As per details in the accompanying
Schedule.</i> | |
| 4) <i>In how many installments the purchase
price</i> | <i>Payable in twelve
installments with
interest</i> |
| 5) <i>Incrumbrances if any</i> | <i>Nil.</i> |

3 Mamlatdar, accordingly ordered that the tenant is the deemed tenant was in possession of the suit property on the tillers date and should pay purchase price of 4,666.50 Paisa in 12 equal installments with 4.5% interest. It is also declared that the said amount be paid to the landlord and the respondent tenant is purchaser on restricted tenure under section 43 of the said Act.

4 In a tenancy appeal under section 74 of the Act, the Sub-

Divisional Officer dismissed the appeal and confirmed the order of Mamlatdar referred supra, upon appreciation of the entire pleadings and evidence.

5 The Appellate Authority has observed that Hari Sutar was the original owner of the suit land whereas Khushaba Aamle was his tenant since 1930-1931. From 1934 onwards, name of Tukaram is recorded as tenant in 7/12 extract. In 1960, tenancy proceedings were initiated in the name of Tukaram as is apparent from the notice under section 32 (G) (1) dated 10/05/1960. When the aforesaid inquiry was pending, Tukaram died leaving behind his brother Sitaram, wife Yashodabai, daughter Bhagubai and as such, the name of Sitaram was recorded as the manager vide mutation entry no. 1344 dated 30/09/1963. In 7/12 extract of 1957, it is also noticed that the name of Tukaram was appearing as tenant and as a consequence to the aforesaid developments, Sitaram was declared as tenant of the property vide order dated 10/02/1965. Declaring Sitaram as tenant vide order dated 10/02/1965, was not questioned and as such the said order has attained finality. Sitaram accordingly

became owner of the said property and father of the present petitioner has no right whatsoever to bequeath the same by virtue of Will dated 1986. In the aforesaid background, the Appellate Authority dismissed the appeal against which a Revision was carried to the learned Maharashtra Revenue Tribunal. The Revenue Tribunal re-appreciated the entire issue and has maintained both orders passed by authorities below. As such, this petition against the above referred concurrent findings.

6 The learned counsel for the petitioner would urge that all the three orders viz. Order of the Additional Mamlatdar, confirmed in appeal by the Sub-Divisional Officer which is confirmed by the Maharashtra Revenue Tribunal are not sustainable as according to him, the authorities have failed to appreciate the factual matrix in its true perspective. According to him, in between 1930-1932 there was no tenancy and as such, the tenancy ought not to have been inferred in favour of Tukaram and thereafter Sitaram being his successor. It is also sought to be canvassed that once Tukaram died in 1962, the succession viz. wife and daughter of Tukaram and his

brother Sitaram ought not to have been permitted to continue in possession under section 32 (G) (1) of the Act.

7 The learned AGP supports the order impugned and submits that under Article 227 in extraordinary jurisdiction, this Court should be slow in causing any interference when there is no error of law. According to him, this Court cannot re-appreciate the entire facts and evidence on record. He sought dismissal of the petition.

8 Considered rival submissions.

9 Based on 1986 Will, present petitioners are trying to put life into a dead case. The record depicts that the original owner Hari has given land in question on tenancy to Khushaba in 1930-1931. Khushaba's Son Tukaram subsequent thereto in 1934 is recorded as tenant.

10 In the tenancy proceedings initiated in 1960 by Tukaram, notice under section 32 (G) (1) of the said Act, dated 10/05/1960 appears to have been issued. The respondents appears to be legal

heirs of Tukaram. Once Tukaram pursuant to an inquiry under section 32 (G) having been declared as protected tenant vide order dated 10/02/1965, the purchase price was fixed which was paid and accepted by the land owner as reflected in the communications dated 25/01/1980 and 18/08/1980. The fact remains that the absolute tenancy rights are created in favour of Tukaram and after his death in favour of present respondent who inherited the same as owner.

11 The said proceedings have attained finality as there was no challenge was raised to declaration of status of protected tenant, payment of purchase price and as such ownership of respondents.

12 That being so, this Court hardly notice any error of law or error of jurisdiction which warrants interference in extraordinary jurisdiction.

13 Contentions lack merit. Petition is dismissed.

[NITIN W. SAMBRE, J.]