

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

WRIT PETITION NO.5009 OF 2017

1]	Shri Raghunath Krishna Gole	]	
	Age 67 yrs. Occ : Agri.	]	
		]	
2]	Shri Jagannath Krishna Gole	]	
	Age 74 years, Occ : Agri.	]	
		]	
	Both residing at Sultaranpur	]	
	Post Bopardi, Tal. Wai	]	
	Dist Satara	]	
	Through Constituted Attorney	]	
	Shri Prakash Jagannath Gole, Age 50 years	]	
	Occ : Agril. R/at Sultanpur, Tal.	]	
	Wai, Dist. Satara	]	 Petitioners.

Versus

Shri Sardar Munaf Patel	]	
D/H Smt. Salima Sardar Patel	]	
Residing at 19/13, Raviwar Peth,	]	
Wai, Dist. Satara.	]	 Respondent.

Mr. A V Chatuphale a/w Mr. Akshay Gangan for the Petitioners
Mr. G S Godbole a/w Ms. Ketki Gadkari and Ms. Shivani S Samel for the Respondent.

CORAM : S. S. SHINDE, J
Reserved on : 10th April 2019
Pronounced on : 3rd June 2019

JUDGMENT :

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The above Writ Petition filed under Article 227 of the Constitution of India takes exception to the order dated 08/02/2017 passed by the Maharashtra Revenue Tribunal, Bench at Pune by which order the judgment and order dated 09/07/1999 passed by the Sub Divisional Officer, Wai in Tenancy Appeal No.15/1998 came to be set aside and, the judgment and order dated 27/08/1998 passed by the Additional Tahsildar and Agricultural Lands Tribunal, Wai in Tenancy Case No.32P/Sultanpur/185/98/Wai came to be confirmed. By the said order dated 08/02/2017 the MRT directed the Petitioners-tenants to hand over the possession of the suit land to the Respondent-landlord within three months of the said order, failure to which the Respondent-landlord is at liberty to initiate the execution proceeding before the ALT Wai. By the said order, the Maharashtra Revenue Tribunal (for short “the MRT”) held the Respondent landlord entitled to have an enquiry as regards future mesne-profit from 09/05/2017 till the actual date of delivery of possession before the competent civil court.

3 The facts giving rise to filing of this Writ Petition in nutshell can in brief be stated as under :-

The Petitioners are the tenants of land being Gat No.35/5 (Old S.No.294/5) Area 45 R and Pot Kharab 1 R (herein after referred to as “the said land”) situated at village Sultanpur, Tal. Wai, District Satara. The Respondent is the landlord of the said land. The land in question was an

Inferior Watan of Class VI land. The father of the Petitioners Krishna Gole was the original tenant of the said land and was in possession on the tillers day. The Petitioners are still in possession of the suit land as tenants. The Respondent sent a notice dated 16/01/1997 to the Petitioners calling upon the Petitioners to hand over the possession of the said land as the Petitioners have failed to obtained certificate under Section 32-G of the Bombay Tenancy and Agricultural Lands Act (for short "the Tenancy Act") within a period of one year as contemplated under Section 32F(1) of the said Act. The Petitioners replied to the said notice vide reply dated 31/03/1997. It is the case of the Petitioners that their father tried to obtain the certificate under Section 32G of the said Act, however, the said land being Inam Class 6B (Patel) land, the proceedings were postponed. For the first time on 29/01/1997, after the notice was received by the Petitioners, the Petitioners came to know that the said land has been re-granted to the mother of the Respondent. It is the case of the Petitioners that the mother of the Respondent never informed the Petitioners about such re-grant. Thereafter Respondent preferred an application to the Agricultural Lands Tribunal, Wai (for short "ALT") inter alia praying for action under Section 32P of the said Act. The Respondent also submitted the order of Re-grant passed by the Mamlatdar of Wai dated 10/10/1963. In the said Application the Respondent stated that it is not necessary to give notice to the tenants that the land has been re-granted. The Tahsildar after considering the evidence and material on record allowed the

application filed by the Respondent under Section 32P of the said Act vide its judgment and order dated 27/08/1998. Being aggrieved by the said judgment and order, the Petitioner filed Tenancy Appeal No.15 of 1998 before the Sub Divisional Officer, Wai under Section 74 of the said Act. The SDO by its judgment and order dated 09/07/1999 allowed the said Appeal and set aside the order of the Tahsildar. Against the order of the SDO, the Respondent preferred a Revision Application being No.77/B/99/NS under Section 76 of the said Act before the Maharashtra Revenue Tribunal, which Revision Application came to be allowed by the MRT by order dated 08/02/2017. It is the said judgment and order of the MRT, Pune dated 08/02/2017 which is taken exception to by way of this Writ Petition.

4 The learned counsel appearing on behalf of the Petitioners Mr. A V Chatuphale submits that the suit property is still in possession of the Petitioners as tenants. The possession of the father of the Petitioners on the date of tillers day as the tenant in possession of the subject land is also not disputed by the Respondent. It is contended by the learned counsel for the Petitioners that proceedings under Section 32G of the said Act were initiated, however, the said proceedings were postponed/dropped as the land was patel inam land and the provisions of section 32 to 32R do not apply to the said land. He further submitted that the Respondent has categorically admitted in his evidence recorded before the Tahsildar that in the year 1958 the landlady

during her lifetime had moved an application under Section 31 which was rejected and possession was refused. He also contended that when a widow landlady has already exercised her right under Section 31(1) of the said Act, the required notice under Section 32F(1) is not mandatory and once a notice under Section 31(1) is served by such a widow landlady, the further benefit of Section 31(3) is not available. The learned counsel for the Petitioners in addition to the grounds raised in the Writ Petition submits that the right to purchase the subject land under Section 32G of the said Act was already invoked by the Petitioners/Tenants and therefore question of applicability of Section 32F of the said Act did not arise. He further submitted that since the Respondent categorically admitted in his evidence that the landlady during her life time invoked Section 31 of the said Act, the provisions of Section 32F are not applicable as such in the present case. In support of the said contention, the learned counsel for the Petitioners sought to rely upon the recent judgment of the Apex Court in the matter of Bayaji Sambhu Mali @ Borate (D)Through LRs v/sw. Nazir Mohammed Balal Zari Through GPA Holder and others reported in 2019 SCC Online SC 184.

5 According to the learned counsel for the petitioners, the Apex Court in the said judgment by reiterating the law laid down in the earlier judgments held that the required notice under Section 32F(1) of the Act is not mandatory in a case when a widow landlady has already exercised her right

under Section 31(1) i.e. when during her lifetime a notice is served to the tenant that the landlady requires the land bonafide.

6 It is further submitted that, since the right to purchase the subject land under Section 32G was already invoked by the tenants, the question of applicability of Section 32F does not arise. The judgment cited by the Respondent in the case of **Appa Narsappa Magdum** is not applicable as such in the present case. The law laid down by the Apex Court in the judgment cited by the Respondent in the case of **Sadashiv Dada Patil v/s. Purushottam Onkar Patil (Dead) by Lrs.** Reported in **(2006) 11 SCC 161** supports the case of the Petitioners that tenant has a vested right to purchase the subject land under Section 32 of the said Act, and proviso to Section 8 of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (for short “1962 Act”) does not take away the said vested right, and it neither creates any right in favour of landlord nor takes away any right of tenant. The sum and substance of the arguments of the learned counsel for the Petitioners is that in the present case the widow landlady Jannatbi Munaf Patel had exercised the right under Section 31(1) of the said Act during her life time by serving notice to the Petitioners stating that the landlady requires the subject land bonafide, and therefore, once such a notice was served by the widow landlady, the benefit of Section 31(3) of the said Act is not available to her and the tenant was not required to sent any intimation within the meaning of Section 32F(1) of the

said Act. The learned counsel for the Petitioners therefore submitted that the learned MRT has failed to appreciate the effect of Section 32(F)(1) of the said Act. He further submitted that the learned MRT has not recorded any finding in respect of application under Section 88(c) of the said Act. He therefore prays that the impugned order passed by the learned MRT may be quashed and set aside and, the Petition filed by the Petitioners may be allowed.

7 Per contra, the learned counsel appearing on behalf of the Respondent Mr. G S Godbole, relying upon the contents of the application which was filed by the Respondent before the Additional Tahsildar and Agricultural Land Tribunal, Wai (for short “ALT, Wai”) and also relying upon the reasoning assigned by the ALT, Wai and the MRT, submits that since the Petitioners after the death of widow landlady did not exercise the right to purchase the subject land within a stipulated period prescribed under Section 32F(1) of the said Act, in that case the right of the tenants to purchase the subject land comes to an end. In support of the said contention the learned counsel for the Petitioner sought to place reliance on the judgments of the Apex Court in the matter of Appa Narsappa Magdum (D) Through LRs v/s. Akubai Ganapati Nimbalkar and others reported in (1999) 4 SCC 443 and in the matter of Tukaram Maruti Chavan v/s. Maruti Narayan Chavan (Dead) By LRs and others reported in (2008) 9 SCC 358. It is further submitted that in the present case, the Petitioners did not exercise the right of

purchase the subject land under Section 32F of the said Act within stipulated period from the date of death of landlady, and therefore, the tenants' right to purchase the subject property came to an end and therefore the Respondent is entitled for possession of the subject land. It is also submitted that failure on the part of the tenant to exercise his right within the period stipulated under the said Act had put to an end to his right to purchase the land and consequences under section 32P are bound to follow. In support of the said contention, the learned counsel for the Respondent sought to rely upon the judgment of a learned Single Judge of this Court reported in (2007) 3 Mah. LJ 344 in the matter of Bakulabai Rama Naikwadi v/s. Vithoba Babaji Bhagat wherein this Court in paragraph 12 of the said judgment has observed that if a tenant not exercised his right to purchase the land by serving required notice on the heirs of the deceased landlady within a period of two years from the date of her death, and therefore failure on the part of the tenant to exercise his right within the period stipulated under the said Act had put to an end to his right to purchase the land and consequences under Section 32P are bound to follow.

8 The learned counsel for the Respondent also placed reliance on the observations made in paragraph 14 of the said judgment in Bakulabai Rama Naikwadi wherein, relying upon the judgment in Aappa Narsappa Magldum's case (supra), this Court held that mere failure on the part of the

legal heirs of the widow to intimate about death of the widow cannot enure to the benefit of the tenant for extending the period of limitation statutorily provided to exercise right of purchase. It is therefore submitted that, the contention of the Petitioners that as the date of death of the landlady i.e. Jannatbi, was not communicated to the Petitioners, and therefore, the Petitioners could not exercise their right to purchase the subject land by serving a notice upon the legal heirs of the deceased landlady, deserves no consideration.

9 The learned counsel submitted that the reliance placed by the learned counsel for the Petitioners on the exposition of the Apex Court in ***Bayaji Sambhu Mali's*** case (supra) is misplaced in the facts of the present case, inasmuch as, in the facts of the said case, the Apex Court considered the case of landlord who was minor at the relevant time and, in the said judgment it is observed by the Apex Court that the said judgment is confined to the facts of that case. In the said judgment the Apex Court dealt with the category of landlord who was minor at the relevant time, and on interpretation of the provisions of Section 32 of the said Act, expressed a view that Section 32 declares that on tillers day which is the first day of April 1957, every tenant shall be deemed to have purchased from his landlord free of all encumbrances subsisting thereon, on the said day, the land held by him. There are two limitations which can be culled out from the said provisions. A declaration

under Section 32 is made subject to the other provisions of the said section. It is further made dependent on the operation of the next succeeding sections. The Apex Court further observed that Section 31 which provides for a period of one year from the date on which the minor attains majority, when the landlord is a minor, for him to give notice and followed by an application under section 29.

10 The learned counsel for the respondent invites specific attention of this court to paragraphs 32 and 39 of the judgment of the Apex Court in *Bayaji Sambhu Mali's* (supra) case, for ready reference the same are reproduced herein under :-

“32. Section 32 declares that on Tillers day which is the First day of April 1957, every tenant shall be deemed to have purchased from his landlord free of all encumbrances subsisting thereon on the said day the land held by him. There are two limitations which can be culled out from the said provisions. A declaration under Section 32 is made subject to the other provisions of the said section. It is further made dependent on the operation of the next succeeding sections. In other words, the provisions which follow Section 32 will control the application of Section 32.

39. Section 31 provides for a period of one year from the date on which the minor attains majority when the landlord is a minor for him to give notice and followed by an application under Section 29.”

It is submitted that the said judgment has mainly dealt with the right of tenant

under Section 32F(1A) of the said Act, in case of landlord who was minor at the relevant time and the said judgment is not an authority to consider the case of tenant whose landlord is widow landlady.

11 It is submitted that in the case of *Appa Narsappa Magdum* (supra), the Apex Court in paragraph No.3 held as under :-

“3. Even if we agree with the contention raised on behalf of the appellant that inspite of the decision of the High Court, it was open to the appellant to contend that he was a tenant and had right to purchase the land Under Section 32F of the Act, it is difficult to appreciate how the impugned order passed by the High Court is wrong. Section 32F provides that in the case where the landlord is a widow, the tenants shall have 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. The landlady died on 8.12.65. Her successors-in-interest could have filed an application for termination of tenancy within one year from 8.12.1965 as her interest in the land ceased to exist from that date. Therefore, the tenant ought to have exercised his right Under Section 32F before 8.12.66. Admittedly, the appellant did not comply with this requirement of Section 32F. The intimation contemplated by Section 32F(1)(a) was given by him long after one year had passed. It was given for the first time on 15.6.68. It was after his right to purchase the land had come to an end.”

12 The learned counsel submitted that in the present case the landlady Jannatbi died on 13/07/1994, therefore the Petitioners should have exercised a right to purchase the subject land under Section 32 of the said Act

within one year. However, in the present case, the Petitioners failed to exercise the said right within one year i.e. on or before 12/07/1995 and therefore the right of the Petitioners to purchase the subject land came to an end. In support of the aforesaid contention the learned counsel for the Respondent also relied upon the judgment in *Tukaram Maruti Chavan's* case (supra). In the said case the Apex Court in paragraphs 7, 13, 14 and 17 observed as under :-

“7. The main issue that was framed by the High Court in deciding the above-mentioned Writ Petition was whether giving of notice under Section 32 F was mandated for the tenant and whether on failure of giving such notice, the tenant had lost the right of purchase and whether the orders of the Tahsildar, the Appellate Court i.e. the Sub Divisional Officer and the Revisional Court i.e. the Maharashtra Revenue Tribunal were liable to be interfered with. It was against this background that the High Court had held that section 32 F is mandatory in nature and there has to be a strict compliance of it. The High Court went on to say that inspite of the fact that the tenant had initiated proceedings under section 32 G and even if he had paid some installments towards the price of the land, the same cannot be considered as substantial compliance resulting in dispensation of the mandatory requirement of section 32 F. Therefore, considering the fact that the tenant had failed in his duty to issue a written notice to the owner of the land i.e. Respondent No. 2, as required under Section 32 F, he has lost his right to purchase the disputed land. The Writ Petition was therefore dismissed by the High Court. Feeling aggrieved by the aforesaid decision of the High Court, this Special Leave Petition was filed which, on grant of leave, was heard in presence of the learned counsel for the parties.

13. In our view, the High Court correctly pointed out

that the provisions of Section 32 F are independent in nature and are separate from the provisions under section 31 of the Act. The exception mentioned under Section 32 F (1) to subsection (2) is limited to the sections referred to in it, i.e., from section 32 to 32E (both inclusive) and 32 G to 32 R (both inclusive). Further the expression "Notwithstanding anything contained in the preceding sections" under sub-section (1) of Section 32 F are of paramount importance. Considering the fact that section 31 is not included in the sections mentioned under sub-section (2) of Section 32 F, and the expression "Notwithstanding anything contained in the preceding sections" under sub-section (1) of Section 32 F, we are of the view that the right given to the landlord under section 31 has nothing to do with the right given to the tenant under Section 32 F for purchasing the land and consequently it has to be held that the appellant in this case was under a legal obligation or statutory duty to give notice of his intention to purchase the land as required under Section 32 F.

14. We also agree with the view of the High Court that even if the proceedings were initiated under Section 32 G by the tenant initially, he cannot claim to be exempted from complying with the mandatory requirement of serving a notice to the landlord as contemplated under Section 32 F which mandated under the Act and commands strict compliance therewith.

17. Again in [Sudam Ganpat Kutwal v. Shevantabai Tukaram Gulumkar](#) [2006 (7) SCC 200], relying on counsel for the parties in their submissions, this Court has clearly summarized the position of law. The paragraphs relevant to this case are 23 (c) to 23 (e) which have been laid down herein:

"23 (c) A landlord has a right to give notice and make an application for possession after terminating the tenancy, if he wanted the land bonafide for personal cultivation, provided the notice was served on the tenant on or before 31.12.1956 (with copy to the Mamlatdar) and application for possession under

[section 29](#) was filed on or before 31.03.1957.

(d) A landlord widow is also entitled to make an application for possession under sub-section (1) of [section 31](#) of the Act. Sub-section (3) of [section 31](#), which is an enabling provision, extends the time within which the widow can seek possession under [section 31](#) (1) of the Act, beyond 31.12.1956. As a result, where the landlord is a widow, then the notice required under sub-section (1) of [section 31](#) may be given and the application for possession under [section 29](#) may be made by her so long as her interest in the land exists. Such notice can also be given by the successor-in-title of the widow within one year from the date on which the interest of the widow in the land ceases to exist.

(e) Where the landlord is a widow [and she does not exercise her right under [section 31](#) (1) of the Act], the right to purchase under the deemed purchase is postponed till the expiry of the period during which such (disabled) landlord is entitled to terminate the tenancy under [section 31](#) (3). The tenant desirous of exercising such right shall, however, give an intimation in that behalf to the landlord and the Tribunal within one year thereafter, as required under section 32 F (1-A). Consequently, where the landlord, being a widow as on 1.4.1957, does not choose to terminate the tenancy for personal cultivation, the tenancy continues during her lifetime and on the death of the widow, her successor-in-title will have the right to terminate the tenancy within one year from the date of the death of the widow. 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 successor-in-title of the widow is given the right to terminate the tenancy under [section 31](#) (3) by giving an intimation as required under section 32 F (1-A).

Consequently, where the landlord, being a widow as on 01.04.1957, does not choose to terminate the tenancy for personal cultivation, the tenancy continues during

her lifetime and on the death of the widow, her successor-in-title will have the right to terminate the tenancy within one year from the date of the widow. 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 successor-in-title of the widow is given the right to terminate the tenancy under Section 31(3) by giving an intimation as required under Section 32-F(1-A).”

It is pertinent to mention here that the above-mentioned case has been cited by the Appellants to contend before us that the required notice under section 32 F is not mandatory in its nature. However we do not agree with this argument advanced by the learned counsel appearing on behalf of the Appellants. The required notice is not mandatory only in a case when a widow land lady has already exercised her right under [section 31 \(1\)](#), i.e. when during her life time, a notice is served to the tenant that the landlady requires the land bonafide. Once a notice under [section 31 \(1\)](#) is served by such a widow landlady, the further benefit of [section 31 \(3\)](#) is not available. Paragraph No. 23 (f) of the above-mentioned case and paragraph no. 27 of the same are of relevance to illustrate our point.: (Sudam Ganpat Case, SCC pp. 210-11)

23 (f) where a landlord, who is a widow, exercises her right of termination and secures possession of part of the tenanted land for personal cultivation under Section 31(1) of the Act, then there is no question of her successor-in-title giving a notice of termination within one year from the date of which the widow's interest ceases to exist. When Section 31(3) ceases to apply, Section 32-F also will not apply and there is no need for the tenant to give any intimation under Section 32-F(1A)”

Therefore relying upon the findings recorded by the Additional Tahsildar and

ALT, Wai and the MRT, the learned counsel for the Respondent submits that the present Writ Petition deserves no consideration and therefore the same may be rejected.

13 Having heard the learned counsel for the parties, I have bestowed my anxious consideration to the rival contentions. It is pertinent to mention at this stage that the MRT, while deciding the revision application, has recorded few relevant facts. It is mentioned that the original Inamdar died on 30/05/1951 leaving behind only widow as LR to represent the Inam Property. On the date of tillers day, landlady who was recorded the owner of the property, was widow. Furthermore, meantime Inferior Watan Abolition Act, came into operation and in view of obligation of Inferior Watan, the suit land was initially vested with the Government. In view of the provisions of the said Inam Act, the order of re-grant of the property in favour of the landlord took place on 18/01/1965. The widow landlady Jannatbi died on 13/07/1994. Before the order of re-grant, the original tenant Krishna reported dead on 20/07/1962. The certification of heirship in the name of opponents i.e. the Petitioners herein came on record through M.E. No.5307 dated 05/01/1969. In view of the order of re-grant and the land being owned by a widow on the tillers day, the provisions of Section 32G i.e. Deemed Purchase was postponed during the lifetime of Jannatbi. The present applicant i.e. the Respondent herein claims ownership over the suit property on the basis of Will executed by

the landlady. The applicant i.e. the Respondent herein has specifically pleaded that despite of effect of re-grant and after the death of widow landlady, the tenants i.e. the Petitioners herein, who are in possession, have failed to exercise their right to purchase the subject land within the statutory period of as laid down u/s 32F of the Act. Therefore, the applicant/landlord has issued legal notice on 16/01/1997 thereby calling upon the opponents i.e. the tenants to handover the possession of the suit property to him. The said notice issued by the landlord, exercising the right of possession, was served on the opponents i.e. the tenants. Therefore the entire proceedings originated from the said application filed by the Respondent-landlord.

14 The Petitioners have placed on record the copy of the notice issued by the Respondent to them and also the reply given by the Petitioners to the said notice. Upon careful perusal of the contents of the said notice given by the Respondent to the Petitioners, it is revealed that the widow landlady Jannatbi died on 13/07/1994 and in view of the provisions of Section 32F of the said Act, the Petitioners i.e. the tenants have not taken steps to serve notice for purchase of subject land within one year i.e. on or before 12/07/1995, and therefore the Respondent is entitled for possession of the subject land under Section 32P of the said Act. It is also mentioned that no rent was paid by the Petitioners to the land owners. As already observed, the said notice was replied to by the Petitioners herein. In reply it was specifically mentioned that

the Petitioners came to know about the death of landlady after receiving notice from the Respondent. Clause 5 of the said reply is reproduced in verbatim herein below :-

“५. सदर जमिनीचा ३२ ग करून मिळणेसाठी आमचे अशिल व त्यांच्या वडिलांना प्रयत्न केलेले होते. सदर ३२ ग चे केसचा नंबर ३२—ग (वाई २८९ (१) व ३२—ग वाई ९८९) असे होते, परंतु सदरची जमिन इनाम वर्ग ६—ब ची (पाटील) असल्याने सदर जमिनीचा ३२—ग चे काम तहकुब केलेले आहे. श्री. अब्दुल रहिम अब्दुल मुनाफ पटेल यांनी मुंबई कुळ व शेतजमिन कायद्याचे कलम ३१ प्रमाणे मागणी केलेली होती. सदरची मागणी फेटाळण्याची आलेली आहे, त्यामुळे सदर जमिनीचा कब्जा मागणेचा हक्क तुम्हास प्राप्त होत नाही.”

It is also mentioned that till 1994 the Petitioners paid rent to the landlady. It is also mentioned that it was incumbent upon the Respondent to communicate the date of death of the landlady to the Petitioners. In absence of such communication there was no question of exercising the right of purchase of the subject land within one year from the date of death of landlady.

15 It appears that the statement of the Petitioners and the Respondent were recorded by the ALT in the proceedings initiated on the application of the Respondent for possession of the subject land. In the cross examination of Respondent Sardar Munaf Patel, important admission has been secured by the Petitioners. In his cross examination, the Respondent has stated

that the landlady Jannatbi Munaf Patel filed an application under Section 31 in the year 1958 to get the possession of the subject land. However, the said application was rejected. Further cross examination of the Respondent indicates that the widow landlady Jannatbi filed application under section 31 for getting the possession of the subject land on the grounds stated by her in the said application. The Additional Tahsildar and ALT Wai culled out the issue and mentioned the same in his judgment and ultimately allowed the application filed by the Respondent and directed the Petitioners to hand over the possession of the subject land to the Respondent. Being aggrieved by the said judgment and order passed by the ALT Wai, the present Petitioners filed Appeal No.15/1998 before the Sub Division Officer, Mahabaleshwar, Sub Division Wai. The Appellate Authority has taken a note of the fact that earlier notices were issued under Section 32G of the said Act, however, the said proceedings i.e. case No.32G Wai/289/(1) were suspended since the subject land was patil inam class VIB land. The Appellate Authority has also taken a note of the fact that the widow landlady Jannatbi filed an application under section 31 of the said Act for possession of the subject land. The said application was rejected. The said fact has been admitted by the Respondent in his cross examination. It is also mentioned that the said application was filed by the widow landlady in the year 1958.

16 Ground (b) and Ground (e) of the said Appeal are relevant and

the same are in verbatim reproduced herein under for the ready reference :-

ब) सदर जमिनीचा ३२ ग करणेकामी पूर्वी नोटीस काढणेत आल्या होत्या सदर केसचा नंबर ३२ ग वाई/२८९/(१) असा आहे. सदर केसचा निकाल ता. २६/३/१९६१ रोजी झालेले आहे. सदरची जमीन ही पाटील ईनाम वर्ग ६ ब असलेले ३२ ग चे काम तहकूब करणेत आलेले आहे. असा निकाम झालेला आहे.

इ) जमिन मालक यांनी मुंबई कुळवहिवाट आणि शेतजमिन अधिनियम १९४८ चे कलम ३१ प्रमाणे कब्जा मागणेचा अर्ज केला होता. सदरचा अर्ज हा नामंजूर झालेला आहे. सदरची बाब रिस्पॉन्डट यांना अपिल उलट तपाससात कबूल केले आहे, सदरचा अर्ज हा १९५८ चे सुमारास केलेला आहे, सदरचा अर्ज नामंजूर झाला त्यावेळी अपिलार्थी ही जमिनीतील कुळे (Statutory Purchaser) सबब या कामी ३२ ग चे काम सुरू होणे आवश्यक आहे. सदरची कायदेशीर तरतुदीचा विचार खालील कोर्टाने केलेला नाही.

17 The Appellate Authority, while allowing the said Appeal principally on the ground that no information about the death of the landlady Jannatbi was given to the Petitioners, and the Petitioners came to know about the re-grant of land in favour of Jannatbi on 27/02/1997, come to a conclusion that the application filed by the Petitioners to purchase the subject land was within time. The Appellate Authority has also taken a note of the aforesaid grounds raised by the Petitioners in the Appeal Memo.

18 The said judgment and order of the Appellate Authority was challenged by the Respondent before the MRT. The MRT framed the following

three points for consideration :-

- 1] Whether the Opponents/tenants have exercised their right to purchase the suit land within limitation as prescribed u/s 32F(1A) of the Act?
- 2] If not, whether the judgment & order passed by Ld. Appellate tribunal in Tenancy Appeal No.15/98 sustain in eye of law?
- 3] If not, whether the judgment & order under revision calls for interference therein through this Tribunal and if yes, upto what extent?

19 The MRT answered the aforesaid point Nos. 1 and 2 in negative, and while answering point No.3 it is held that the order passed by the Appellate Authority needs to be interfered with. The MRT did not consider the aforesaid grounds raised by the Petitioners in the Appeal Memo before the Sub Divisional Officer. As submitted by the learned counsel for the Petitioners even the said grounds were agitated before the MRT. If the aforesaid grounds raised by the Petitioners go to the root of the matter, it was incumbent upon the MRT to frame specific point in respect of the aforesaid two grounds raised by the Petitioners. However, the MRT proceeded to decide the revision application filed by the Respondent and set aside the judgment and order passed by the Appellate Authority observing that the tenants i.e. the Petitioners failed to exercise their right of purchase under Section 32(F)(1) of the Act within one year from the death of landlady Jannatbi and therefore their right to purchase

the subject land has come to an end and that they should hand over the possession of the subject land to the Respondent.

20 If the judgments cited by the learned counsel for the Respondent are carefully perused, the view taken in the said judgments is that in case a tenant fails to exercise the right to purchase the property within stipulated period from the date of death of landlady mentioned in Section 32F of the said Act, in that case, the right of tenant to purchase the said property comes to an end and the owner of the property becomes entitled for possession of the said property. However, in the facts of the present case, the widow landlady Jannatbi during her lifetime filed an application under section 31(1) of the said Act praying therein for possession of the subject property on the grounds available under Section 31(1) of the said Act. It is admitted by the Respondent in his cross examination that the said application was rejected.

21 The legal position which emerges from the careful perusal of aforesaid paragraph 17 of the judgment of the Apex Court in ***Tukaram Maruti Chavan's*** case (supra) is that a required notice under Section 32-F(1A) is not mandatory when a widow landlady has already exercised her right under Section 31(1), when during her life time notice is served on the tenant that landlord bonafide requires the land. It is further made clear that once a notice

under Section 31(1) is served by such a widow landlady, the further benefit of Section 31(3) is not available.

22 At the cost of repetition, in the facts of present case, as admitted by the Respondent in his cross examination that the widow landlady Jannatbi did file an application under Section 31(1) of the said Act in the year 1958 for possession of the subject land and the said application was rejected. In that view of the matter, it was incumbent upon the MRT to deal with the said aspect and frame specific points and render its findings.

23 The MRT has also not considered the contention of the Petitioners as reflected in Ground (b) of the Appeal memo, that earlier the notices were issued under Section 32G of the said Act and the said case was numbered as 32G Wai/289/(1). In the said proceedings it was concluded that since the subject land was patil inam class VIB land, the proceedings under Section 32G are required to be suspended, and accordingly said proceedings were suspended. The MRT ought to have recorded the finding on the said aspect. The aforesaid two important grounds/aspects go to the root of the matter, and therefore it was incumbent upon the MRT to properly exercise the jurisdiction vested in it and frame the necessary points in respect of the aforesaid two aspects/grounds.

24 There is no quarrel with the legal preposition that, tenant of widow landlady must exercise right to purchase land under section 32F within one year of landlady's death, on expiry of one year his right to purchase comes to an end. However, as indicated herein above, the facts of the present case are distinguishable vis-a-vis the facts of judgments cited by the learned counsel appearing for the respondent, inasmuch as, in the present case the widow landlady had filed an application under Section 31(1) of the said Act in the year 1958 and the said application was rejected, and secondly, the proceedings of case No.32G Wai/289/(1) were suspended since the subject land was patil inam class VIB land.

25 In that view of the matter, this Court is of the considered view that, there was failure on the part of the MRT to exercise the jurisdiction vested in it by not advertng to the aforesaid two aspects/grounds, and not framing the specific points for determination on the said aspects/grounds. In case the order of the MRT is allowed to operate, it would cause prejudice to the case of the Petitioners and also in absence of framing of specific points on aforesaid aspect/grounds, even the Respondent had no opportunity to contest the said aspects/grounds. Therefore it would be appropriate in the interest of justice to quash and set aside the impugned judgment and order of the MRT

dated 08/02/2017, and remand the matter back to the MRT for a de-novo consideration of the said revision application. Hence following order:

- 1] The impugned order dated 08/02/2017 passed by the Maharashtra Revenue Tribunal, Pune Bench, Pune is accordingly quashed and set aside and the Revision Application No.77/B/99/NS is restored to file and relegated back to the Maharashtra Revenue Tribunal, Pune Bench, Pune for a de-novo consideration.
- 2] On remand, the Maharashtra Revenue Tribunal, Pune Bench, Pune to decide the Revision Application latest by 31st July 2019. The parties to appear before the Maharashtra Revenue Tribunal, Pune Bench, Pune on 19th June 2019 at 11.00 am. The parties are at liberty to file their further pleadings, documents, however, the same to be done on or before 19th June 2019, when the parties would appear before the Maharashtra Revenue Tribunal, Pune Bench, Pune or within such further time as the Maharashtra Revenue Tribunal, Pune Bench, Pune may grant.
- 3] The Maharashtra Revenue Tribunal, Pune Bench, Pune to

adjudicate upon the said Revision Application afresh after framing the necessary points including the points on the aforesaid two aspects/grounds, and arrive at a conclusion on the basis of the material on record.

4] The MRT shall decide the case on its own merits uninfluenced by the observations made on merits herein above. Needless to state that all the contentions of the parties are kept open for being adjudicated upon by the Maharashtra Revenue Tribunal, Pune Bench, Pune.

5] The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[S. S. SHINDE , J]